



Many of our engagements involve matters in which our clients face significant public attention. The following is a list of news stories about the firm, our clients, cases and the results we have achieved.

## **Sacramento-based Propel Fuels Sues Phillips 66 Over Alleged Trade-Secrets Heist**

May 18, 2022

*Lawsuit Claims Fossil-Fuel Giant Used Deceit During Acquisition Talks to Lift Environmental, Social and Governance Strategy it Couldn't Develop on its Own*

SAN FRANCISCO, May 18, 2022 -- Propel Fuels, Inc. ("Propel"), a retailer of low-carbon fuels at branded stations throughout California, has filed a lawsuit against Phillips 66 Company ("Phillips 66"), claiming the Texas-based oil company misappropriated Propel's trade secrets and engaged in unlawful business practices in violation of California's Uniform Trade Secrets Act and Unfair Competition Law.

Propel is represented by the San Francisco law offices of global disputes firm Kobre & Kim, who brought the suit Feb. 16, 2022, in Alameda County Superior Court. The complaint, unsealed yesterday by the court, alleges Phillips 66 obtained Propel's trade secrets during the due diligence process for a proposed acquisition only to walk away from the deal and launch its own renewable fuels business in California shortly before the acquisition was to be consummated.

All told, Phillips 66 is investing billions of dollars in the California renewable fuel market based on Propel's trade secrets, the complaint says.

Prior to receiving Propel's confidential information, Phillips 66 had not sold any branded renewable fuels to consumers in California, and it knew nothing about the business, the lawsuit claims. As one of California's largest refiners and retailers of fossil transportation fuels in California, Phillips 66 is highly motivated to find a solution for its increasingly expensive carbon emission obligations.

Under California's Low Carbon Fuel Standard (LCFS), Phillips 66 must reduce its fuels' carbon content some 20 percent by 2030. To meet that requirement, Phillips 66 is required to sell a certain volume of low-carbon fuels – or buy LCFS credits from businesses like Propel – if it can't reduce its fuels' carbon content on its own.

According to the complaint, Phillips 66 had never sold a drop of low-carbon fuel to consumers in California at the time of the acquisition offer, meaning it was faced with the escalating costs of compliance by purchasing carbon credits, with no meaningful source of generating credits to offset them.

Enter Propel. Founded in Seattle, Wash., and recruited to California by state agencies seeking to expand low carbon fuel availability, Propel pioneered an "on-ramp" for consumers to access California's low-carbon economy. Propel did that by connecting people to affordable, low-carbon fuels at convenient locations throughout California – in places like Oakland, Fresno, Riverside and nearby locales considered "Disadvantaged Communities" by the California Environmental Protection Agency.

Where nearly every other market entrant failed, Propel thrived due to proprietary business strategies and data-driven analytics developed over years of experience. Based on the success of those strategies, Propel had been hailed as "cracking the code" of the renewable fuels retail market.

Propel has also received multiple awards, including the 2016 Clean Energy Award for Best Clean Energy Technology Innovator, and rankings on the Inc. 500 and the Silicon Valley Business Journal's lists of fastest-growing companies.

Propel's strength in the renewables market made it – and its trade secrets – an attractive acquisition target for Phillips 66.

The complaint alleges Propel's trade secrets showed Phillips 66 that there was an opportunity not just to help Phillips 66 mitigate its LCFS compliance costs, but to pour the foundation of an entirely new business opportunity that could drive the profitability for Phillips 66 while burnishing its environmental, social and governance (ESG) credibility – a significant factor in driving the low-carbon business investments for fossil-based Big Oil companies.

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"Unsurprisingly," Propel's lawsuit states, "Phillips 66 expressed enthusiasm for pushing ahead with the transaction." On Dec. 20, 2017, it submitted an all-cash acquisition bid and began what it initially described as confirmatory due diligence.

"What started as standard due diligence," says Propel Fuels founder and Chief Executive Officer Rob Elam, "transformed into a year-long extraction of trade secrets."

Phillips 66 demanded detailed information about all aspects of Propel's business and strategic insights from Propel's management, the lawsuit says. Propel also lent Phillips 66 its experience and reputation, meeting with California regulators and guiding Phillips 66 through the complex regulatory process necessary to secure approval to sell E85 and renewable diesel on the Phillips 66 network.

For instance, Phillips 66 demanded Propel use its proprietary location algorithms to choose the top 250 locations for new Phillips 66 / 76-branded low-carbon fueling sites across California, later built by Phillips 66 without Propel, and designed to lure away Propel customers, according to the complaint.

The lawsuit alleges that, in order to acquire this confidential information, Phillips 66 repeatedly assured Propel's senior management of its intention to consummate the deal and that it would not enter the California renewables market without Propel.

When final documentation for Phillip 66's acquisition of Propel was mere hours from final signatures, Phillips terminated the transaction without any explanation on a Friday morning.

The following Monday, Phillips 66 notified California regulators that it intended to apply for permits to distribute and sell the same kind of low-carbon fuels Propel Fuels was selling.

Walking away after Propel had effectively designed an entire low-carbon business for it, the complaint asserts, Phillips 66 is now in the process of building a copycat business using the highly proprietary financial models, customer research data, and trade secrets it learned during the confidential due diligence process.

Since pulling out of the deal, Phillips 66 announced an \$800 million project at its Rodeo, Calif., refinery to begin making renewable diesel fuel, and has rolled out renewable diesel and E85 (85 percent ethanol, 15 percent gasoline) fuel sales at some 450 of its California retail 76 stations.

Propel Fuels was left with "no choice" but to seek legal remedy for the alleged theft of its proprietary business data and methods by Phillips 66, Elam says.

Before Propel, Phillips 66 had no low carbon business in California – no customers, no financial data, no operational experience. But after extracting Propel's trade secrets, Phillips 66 was confident enough to invest billions of dollars, ahead of their Big Oil peers, into a strategically critical new low carbon business effort, the lawsuit says.

According to the complaint, Phillips could and would not have made those investments without the business strategies, data, and relationships with customers and regulators that Propel spent more than a decade developing. Propel was supported by California agencies (and tax dollars), employed Californians in the new-energy economy, and engaged a wide range of stakeholders in those efforts.

"We believe all of this was simply stolen by Phillips 66," Elam says.

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## About Kobre & Kim

Kobre & Kim is a global Am Law 200 law firm that focuses on cross-border disputes and investigations, often involving fraud and misconduct. Our specialized, integrated product offerings allow the firm to address clients' underlying problems, whether they are legal, financial or reputational. For example, the firm has deep experience working on behalf of both creditors and debtors in international claims litigation, strengthening our ability to deliver on both sides of these disputes. For ultra-high-net-worth individuals with global business interests, we deploy cross-border litigation and crisis management strategies to preserve assets, liberty and reputation. We primarily act as special advocates in sensitive situations requiring independence and conflict-free advocacy.