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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

FORD GLOBAL TECHNOLOGIES, LLC; FORD MOTOR COMPANY,

Plaintiffs-Appellants/Cross-Appellees,

v.

INTERMOTIVE, INC.; GREGORY E. SCHAFER,

Defendants-Appellees/Cross-Appellants.

Nos. 25-1971/1985

Appeal from the United States District Court for the Eastern District of Michigan at Flint.
No. 4:17-cv-11584—Terrence George Berg, District Judge.

Argued: October 22, 2026

Decided and Filed: November 16, 2026

Before: KETHLEDGE, Chief Judge; CLAY and NALBANDIAN, Circuit Judges.

COUNSEL

ARGUED: Jonathan D. Hacker, O'MELVENY & MYERS LLP, Washington, D.C., for Ford Global Technologies, LLC and Ford Motor Company. Andrew M. Grove, HOWARD & HOWARD ATTORNEYS PLLC, Royal Oak, Michigan, for InterMotive, Inc. and Gregory E. Schafer. **ON BRIEF:** Jonathan D. Hacker, O'MELVENY & MYERS LLP, Washington, D.C., Thomas Harris, O'MELVENY & MYERS LLP, Newport Beach, California, for Ford Global Technologies, LLC and Ford Motor Company. Andrew M. Grove, Joseph W. Barber, HOWARD & HOWARD ATTORNEYS PLLC, Royal Oak, Michigan, for InterMotive, Inc. and Gregory E. Schafer.

OPINION

CLAY, Circuit Judge. Plaintiffs-Appellants/Cross-Appellees Ford Global Technologies, LLC and Ford Motor Company ("Ford") appeal: (1) the district court's denial of their motion for judgment as a matter of law on a trade secret claim; and (2) the jury's unjust enrichment award.

Defendants-Appellees/Cross-Appellants InterMotive, Inc. and Gregory E. Schafer ("InterMotive") cross-appeal: (1) the district court's cancellation of its jury award under the Lanham Act (15 U.S.C. § 1051 *et seq.*); (2) the district court's denial of prejudgment interest on the cancelled Lanham Act award; (3) the district court's denial of enhanced damages for trademark infringement; (4) the district court's determination that InterMotive could not recover disgorgement damages for breach of a non-disclosure agreement; and (5) the district court's grant of a motion in limine excluding InterMotive's implied contract theory from trial.

We **AFFIRM** the district court on all issues raised.

I. BACKGROUND

A. Factual Background

1. Upfitter Interface Modules and InterMotive's Business

The Upfitter Interface Module (UIM) is a type of electronic control module, a standard component used in the automotive manufacturing aftermarket by companies known as "upfitters," or specialty vehicle manufacturers. The "upfit" marketplace adapts partially unfinished vehicles, sold by original equipment manufacturers (OEMs) like Ford, into specialty vehicles such as work trucks, transit vehicles, police vehicles, ambulances, fire trucks, and school buses. Upfitters typically have to add their own control systems—like UIMs—to a vehicle in order to configure and sell it for its intended purpose.

Greg Schafer founded InterMotive in 1996, after previously working for Ford as a design engineer and field service engineer. InterMotive "design[s] and manufacture[s] automotive

electronic control systems almost exclusively for commercial vehicles." Trial Tr. Vol. 5, R. 251, Page ID # 9792:23–25. Customers of InterMotive are typically companies that purchase unfinished commercial vehicles from OEMs, who then perform final-stage manufacturing on vehicles and sell them to end users purchasing a series of vehicles. InterMotive's products are designed to be "plug and play," meaning the manufacturer "do[es]n't have to cut into any OEM wires." Trial Tr. Vol. 5, R. 251, Page ID # 9793:23–25. Ford also sells modules, as do several other companies.

As described by the district court, InterMotive's trade secret was embodied in their UIM product, which was "designed as a programmable 'plug and play' module that has inputs and outputs for the aftermarket equipment, as well as the ability to 'interface' with the vehicle and eliminate the need to splice into the vehicle's wiring to access vehicle data." Order Denying JMOL, R. 295, Page ID # 13174. The UIM works by providing a plug-in interface with the vehicle on-board network to obtain Controller Area Network ("CAN") data for controlling added specialty equipment. "In lay terms, the UIM could simply plug into the semi-finished vehicle and detect the signals on the vehicle's onboard network that the upfitter needed to control the equipment it was adding, and then use those signals to control the equipment." Second Br., ECF No. 46, 7. The UIM, and other modules like it, provide a way for users to customize a vehicle's features.

2. Ford and InterMotive's Collaboration

In 2011, Ford and InterMotive began a business relationship wherein InterMotive would design a UIM specifically for Ford. Ford and InterMotive's preliminary discussions were governed by a Confidential Disclosure Agreement (the "CDA").

In 2012, Ford and InterMotive agreed to a three-phase project. The "Phase 1 UIM" was produced within six weeks and consisted of InterMotive taking their preexisting UIM product and adding enhancements specific to Ford CAN data. This UIM was produced quickly so that Ford could show it at the NTEA 2012 Work Truck tradeshow. At this show, Ford presented the Phase 1 UIM to a room of "about 400-plus people." Trial Tr. Vol. 5, R. 251, Page ID # 9799:11.

Ford engaged in other promotion of the Phase 1 UIM at its booth for the remainder of the tradeshow.

The "Phase 2 UIM" was intended to include Ford-compliant hardware and InterMotive firmware. InterMotive developed a specification for the Phase 2 UIM in early March 2012. The Phase 2 UIM included the trade secret at issue in this case, the use of programmable inputs in the UIM device. After months of discussion between InterMotive and Ford regarding the design for the Phase 2 UIM, InterMotive provided Ford with the Phase 2 UIM specification pursuant to the CDA in December 2012. InterMotive produced 12 prototypes of the Phase 2 UIM, one of which was left with Ford following InterMotive's demonstration of it at this December 2012 meeting.

The "Phase 3 UIM" would have included both Ford-compliant hardware and Ford-compliant firmware. However, in early 2013 Ford informed InterMotive it would not be moving forward with the project and InterMotive stopped development toward the Phase 3 UIM model.

3. Following Ford and InterMotive's Split

Years later, at the 2016 NTEA tradeshow, Ford publicly announced that several of its 2017 vehicles would include a "UIM" that would make it easier for upfitters to work on the electrical systems in Ford vehicles. This announcement caused InterMotive to suspect Ford had taken and copied InterMotive's confidential information from the Phase 2 UIM specification. InterMotive brought these concerns to Ford, and Ford responded by filing the instant suit.

B. Procedural History

1. Pre-Trial

Ford filed its district court case against InterMotive and Mr. Schafer on May 17, 2017. Ford asserted claims of trademark infringement, false designation of origin, unfair competition, trademark dilution, and cancellation of trademark registration. In its answer, InterMotive asserted counterclaims of trademark infringement, unfair competition under federal and state law, breach of contract, false advertising, and trade secret misappropriation under the Michigan Uniform Trade Secrets Act (MUTSA), Mich. Comp Laws § 445.1901 *et. seq*.

The parties filed cross motions for summary judgment on nearly every claim asserted. These motions were denied except with respect to one part of InterMotive's claim for false advertising.[1] Ford additionally filed motions challenging InterMotive's damages model for failure to apportion damages, asserting that InterMotive bore the burden to prove what portion of Ford's profits are attributable specifically to the trade secret elements allegedly contained within Ford's UIM devices. The district court rejected these arguments and held that InterMotive could present its damages theory based on the entirety of Ford's profits for selling vehicles with UIM devices. Finally, the district court granted Ford's motion in limine seeking to "exclude an implied contract theory from InterMotive's breach of contract counterclaim." Final Pretrial Tr., R. 218, Page ID # 8197:1–2.

2. Trial

The case proceeded to trial from October 18, 2023 to November 1, 2023. A theory significant to this appeal that Ford presented at trial is that InterMotive's Programmable Relay Power Center ("PRPC") practices the claimed trade secret and disclosed it to the public when the PRPC was released in 2014. The district court defined the claimed trade secret to the jury as "the use of programmable inputs in a device like the Upfitter Interface Module." Trial Tr. Vol. 11, R. 266, Page ID # 11154.

Among its instructions to the jury, the district court gave the following instructions regarding damages for InterMotive's trade secret misappropriation claim:

> If you find InterMotive has proven that Ford misappropriated its trade secret, you must decide the damages, if any, to which InterMotive is entitled. If InterMotive has not proven misappropriation of its claimed trade secret, your verdict must be for Ford on that question and you must not consider trade secret damages.
>
> InterMotive has the burden of proving its damages with reasonable certainty. Damages not based on evidence presented in this case or on speculation and conjecture are not recoverable, but damages are not speculative merely because they cannot be ascertained with mathematical precision.

[1]The district court also, at an earlier point in the case, dismissed with prejudice Ford's claim of trademark cancellation.

> In this case InterMotive is seeking damages based on the unjust enrichment caused by Ford's misappropriation.
>
> In order to prove entitlement to unjust enrichment or disgorgement damages, InterMotive must prove by a preponderance of the evidence both (1) that Ford's use of the trade secret caused Ford to make additional vehicle sales, and (2) a reasonable estimation of the actual amount of additional vehicle sales caused by the misappropriation of the trade secret.
>
> Alternatively, InterMotive seeks to recover the profits Ford gained from the sale of Ford's modules caused by the misappropriation of InterMotive's trade secret.
>
> If InterMotive meets this burden with evidence as to the amount of additional vehicle or module sales that were caused by the misappropriation of the trade secret, the burden will then shift to Ford to prove its setoffs and deductions to arrive at the amount of vehicle or module profits from sales that were actually caused by the misappropriation of the trade secret.
>
> For example, if InterMotive seeks a damages award based on a certain percentage or amount of Ford's vehicle or Ford's module profits, then InterMotive must prove that the trade secret drove that percentage or amount of vehicle or module sales.
>
> If you find that InterMotive has not met its burden of proof in showing that Ford's unjust enrichment was caused by the misappropriation of the trade secret, a damages award based on Ford's vehicle or module profits would necessarily be speculative and therefore impermissible.
>
> But if you find that InterMotive has shown by a preponderance of the evidence that Ford's use of the trade secret caused additional vehicle or module sales, and that the evidence provides a reasonable estimation of the amount of additional vehicle or module sales caused by the misappropriation of the trade secret, then you must award unjust enrichment damages to InterMotive in an amount of Ford's profits from such sales after deducting any setoffs or costs that Ford has shown should not be included in calculating the net profit.

Id. at Page ID # 11158–60. Ford sought a jury instruction that the burden rested on InterMotive to further apportion its damages to the incremental benefit of Ford's modules that only the trade secret provided, but this request was overruled. In addition, the district court provided the following instruction to the jury regarding potential overlap between a damages award for trade secret misappropriation versus unfair competition:

> In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what a party's ultimate recovery

> may be, may or may not be. Overall recovery, if any, will be determined by the Court when it applies the law to your answers at the time of judgment.

Trial Tr. Vol. 11, R. 266, Page ID # 11164–65.

On November 1, 2023, the jury returned its verdict. The jury found for InterMotive on its trademark infringement claim, including that Ford's infringement was willful, deliberate, and intentional, but found that none of Ford's profits from the sale of the UIM were caused by Ford's trademark infringement. The jury then found for InterMotive on its breach of contract claim and awarded nominal damages of $1.00 as instructed. The jury did not find that InterMotive had proven its false advertising claim. Finally, the jury found for InterMotive on its trade secret misappropriation and unfair competition claims. The jury determined that $13,209,300 of Ford's profits from the sale of Ford's modules were caused by the misappropriation of the trade secret, and that $349,867 of Ford's profits from the sale of its modules were caused by unfair competition under the Lanham Act.[2] The jury found that none of Ford's profits from the sale of its modules were caused by unfair competition under Michigan law.

3. Post-Trial

In its final judgment, the district court sua sponte reduced the jury award by $349,867. The court did so on the basis that the $349,867 amount "represents a percentage of Ford's profits which [had] already been included in the $13,209,300 award for trade secret misappropriation representing the full amount of Ford's profits." Final J., R. 282, Page ID #11652. Accordingly, the court reduced the damages award "to prevent double or duplicative recovery of Ford's profits for both trade secret misappropriation and unfair competition under the Lanham Act." *Id.*

Ford filed a motion for a renewed judgment as a matter of law and a new trial directed to InterMotive's trade secret misappropriation counterclaim, and unjust enrichment damages award

[2]InterMotive's damages expert, Mark Robinson, testified that Ford's profits on its sales of the accused modules in North America were $15,913,350. Ford's damages expert, Sara Rinke, testified that Ford's profits on sales of the accused modules worldwide were $13,209,300. Rinke further testified that InterMotive had a market reach of 3%, meaning that Ford's profits attributable to its use of the UIM name were $349,867. Accordingly, the jury selected the same damages figures as Rinke presented to them for both the trade secret misappropriation and unfair competition claims—Ford's entire profits for the modules for trade secret misappropriation, and 3% of these profits for unfair competition.

under the MUTSA and unfair competition counterclaims under the Lanham Act. The district court denied the motion in its entirety.

InterMotive filed a motion to amend the final judgment, seeking a reinstitution of the $349,867 jury award for Lanham Act unfair competition, and prejudgment interest (including on the $349,867 unfair competition award). The district court granted this motion in part, awarding $3,011,092 in prejudgment interest on the jury's award for trade secret misappropriation under the MUTSA, and otherwise denied InterMotive's motion.

This appeal followed. Ford filed a timely notice of appeal on October 24, 2025, and InterMotive filed a timely notice of cross appeal on October 28, 2025.

II. DISCUSSION

A. InterMotive's Trade Secret Claim

1. Standard of Review

This Court first considers whether the district court erred in denying Ford's motion for judgment as a matter of law regarding InterMotive's trade secret claim. We review the denial of a Rule 50(b) motion for judgment as a matter of law de novo. *Smith v. Rock-Tenn Servs., Inc.*, 813 F.3d 298, 306 (6th Cir. 2016). "In so doing, we may not weigh the evidence, question the credibility of witnesses, or substitute our own judgment for that of the jury." *Id.* (citing *Rhinehimer v. U.S. Bancorp Invs., Inc.*, 787 F.3d 797, 804 (6th Cir. 2015). Reversal is only appropriate where no reasonable mind could agree with the jury's verdict, when viewing the evidence in the light most favorable to the non-moving party and drawing all reasonable inferences in the non-moving party's favor. *Ermold v. Davis*, 130 F.4th 553, 565 (6th Cir. 2025) (citing *Yoder & Frey Auctioneers, Inc. v. EquipmentFacts, LLC*, 774 F.3d 1065, 1072 (6th Cir. 2014)).

2. Analysis

A "trade secret" under the MUTSA is "information that derives independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who could obtain economic value from its disclosure or use," and such

information must be "the subject of reasonable efforts under the circumstances to maintain its secrecy." *Dice Corp. v. Bold Techs.*, 556 F. App'x 378, 385 (6th Cir. 2014) (citing Mich. Comp. Laws § 445.1902(d)). Trade secret law does not protect "an idea which is well known or easily ascertainable." *Id.* (quoting *Manos v. Melton*, 100 N.W.2d 235, 238 (Mich. 1960)). However, not all trade secrets become "plainly visible merely by looking at the units." *Scharmer v. Carrollton Mfg. Co.*, 525 F.2d 95, 99 (6th Cir. 1975).

Ford argues that the undisputed evidence shows that InterMotive's trade secret lost its trade secret status by the time Ford released its UIM-like product in 2016 because InterMotive itself had already disclosed the idea in its own PRPC prototype in 2014. Ford asserts that the public use of programmable units in InterMotive's PRPC device is not disputed, and that the PRPC device is sufficiently similar to the Phase 2 UIM such that the PRPC device publicly disclosed the trade secret. In particular, Ford argues that while the PRPC device disclosed *additional* elements, these elements were irrelevant to disclosure of this trade secret, and that InterMotive's own witnesses admitted the added size, power, and functions of the PRPC device were not themselves trade secrets. InterMotive responds both that expert testimony and other evidence at trial demonstrated that the mere sales of the PRPC do not reveal the use of programmable units, and that the PRPC had critical differences from the trade secret and the Phase 2 UIM.

The jury heard evidence that the PRPC prototype required other modules to function like the UIM, and that it was physically "much bigger" than the Phase 2 UIM. Trial Tr. Vol. 5, R. 264, Page ID #10764. Professor Juan Pimentel, serving as an expert for InterMotive, testified before the jury that this distinction between the PRPC product and the Phase 2 UIM was significant, because the PRPC cannot be hooked directly to a CAN bus like the UIM—that "to perform the functions it's intended for," the PRPC requires "a LIN communication between this and yet another module." *Id* at Page ID # 10765. Professor Pimentel specifically clarified that while CAN and LIN are not confidential in and of themselves, "the way you use a CAN bus in a specific design such as this one for a specific end user, that is confidential." *Id.* at Page ID # 10770.

Professor Pimentel further testified that it is "extremely hard to figure out how [the PRPC is] made," such that public availability of the PRPC does not entail public availability of the trade secret technology it contains. *Id*. at Page ID # 10765. He expressly stated to the jury that it would be difficult to reverse-engineer such a product and had not heard testimony that Ford had managed to achieve such reverse engineering. *Id*.

Ford argues in its reply that the "inner workings" of the UIM-like device are irrelevant, and that other witnesses testified that it would not be difficult to reverse-engineer the PRPC. However, the standard of review requires this Court to consider all evidence in the light most favorable to the non-movant and reverse only where there is no genuine dispute of material fact. In this case, InterMotive put forth evidence that the PRPC device (1) did not practice the trade secret, and (2) would have been difficult enough to reverse-engineer that it would not have disclosed the trade secret even if it did practice it. The jury was permitted to credit such testimony from InterMotive's expert over other testimony and evidence in reaching its verdict. Accordingly, this Court will not disturb the jury's verdict on InterMotive's trade secret claim.

B. The Trade Secret Misappropriation Award

1. Standard of Review

The Court next considers whether the district court erred in its instructions to the jury regarding damages for trade secret misappropriation, and whether it erred in denying Ford's motion for judgment as a matter of law directed to the sufficiency of InterMotive's evidence on damages at trial.

"We review the legal accuracy of jury instructions de novo… and the denial of the proposed jury instruction for abuse of discretion." *Ventas, Inc. v. HCP, Inc.*, 647 F.3d 291, 305 (6th Cir. 2011) (internal quotation omitted). Jury instructions are reviewed as a whole, and the reversal of a judgment on the basis of an erroneous jury instruction may occur only if the instructions viewed as a whole were confusing, misleading, or prejudicial. *Smith v. Joy Techs., Inc.*, 828 F.3d 391, 397 (6th Cir. 2016). Further, this Court's review of a jury's damages award "is extremely deferential, and we will not order a remittitur or new trial unless the award 'is contrary to all reason.'" *Mike's Train House, Inc. v. Lionel, L.L.C.*, 472 F.3d 398, 413 (6th Cir.

2006) (quoting *In re Lewis*, 845 F.2d 624, 635 (6th Cir. 1988)). The denial of a Rule 50(b) motion is reviewed de novo. *Smith*, 813 F.3d at 306.

2. Analysis

Ford raises two distinct challenges regarding the $13.2 million trade secret misappropriation damages award to InterMotive. First, Ford argues that the district court erred when it did not require InterMotive to apportion Ford's UIM profits between the protected and unprotected elements of the UIM, which renders the jury's verdict improper as a matter of law. Second, Ford argues that even if the district court properly instructed the jury on the law, the jury's verdict should be overturned as it is unsupported by the evidence in the record. The Court takes up each of these challenges below.

i. Apportionment

Under the MUTSA, a plaintiff "is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss." Mich. Comp. Laws § 445.1904. Ford argues that this "caused by" language imposes a mandate, borrowed from patent law, that the award for misappropriation under the MUTSA must be apportioned such that it represents *only* the value of the trade secret used within the product—such that in this case, the jury's award of Ford's entire profits from module sales is erroneous because it captures profits earned on unprotected aspects of the modules. Ford further argues that the district court erred when it instead imposed a burden-shifting framework which instructed the jury to "award unjust enrichment damages to InterMotive in an amount of Ford's profits from [sales caused by the misappropriation of trade secrets] after deducting any setoffs or costs that Ford has shown should not be included in calculating the net profit." First Br., ECF No. 38, 40 (citing Trial Tr. Vol. 11, R. 266, Page ID # 11159–60).

The Court finds that the district court's burden-shifting approach and instructions to the jury were not erroneous, as they were tailored to the circumstances presented by this particular case. The instructions the district court gave to the jury put an initial burden on InterMotive to demonstrate an "amount of additional vehicle or module sales that were caused by the

misappropriation of the trade secret," and then shifted the burden to Ford "to prove its setoffs and deductions to arrive at the amount of vehicle or module profits from sales that were actually caused by misappropriation of the trade secret." Trial Tr. Vol. 11, R. 266, Page ID # 11159.

This approach borrows from the requirement in copyright law that "[i]n assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claimed." 15 U.S.C. § 1117(a). This approach also accounts for the fact that disgorgement is a distinct remedy from those applied in patent law cases. Finally, it accounts for the reality that Ford is in a better position to provide an apportionment analysis to the jury, since it can more easily conduct a review into both which portions of its profits from the modules it believes were driven by the misappropriated trade secret versus unprotected components, and into its costs in designing the accused product. This benefit is acknowledged in Milgrim on Trade Secrets, a secondary source the district court relied on when considering this question:

> Where a plaintiff seeks to recover the defendant's profits resulting from the misappropriation, its burden is only to establish that the defendant achieved revenues from the use of the trade secret. Where plaintiff meets that burden, defendant has the burden of proving permissible deductions from gross revenues. That approach makes sense because at least with respect to the expenses defendant incurred exploiting the misappropriated trade secret, it will be defendant that has both access to and knowledge of the relevant evidence and the incentive to bring that evidence forward. . . In addition to expenses, defendant may reduce its potential unjust enrichment liability by establishing that a portion of its value of its product was attributable to something other than the misappropriated trade secret.

4 Milgrim on Trade Secrets § 15.02(3)(c)(iv).

This Court has previously recognized that such a burden-shifting rule is logical in the copyright context, since it "corresponds to the reality that the infringer usually possesses the information necessary to provide the victim a fair share of the profits." *Premier Dealer Servs., Inc. v. Allegiance Adm'rs, LLC*, 93 F.4th 985, 994 (6th Cir. 2024). It is the defendant who further "possesses every incentive to identify as many alternative contributors to the profits as it can." *Id.* at 995.

The Court is convinced that the framework the district court instructed the jury to apply adequately required InterMotive to prove that any unjust enrichment the jury finds Ford acquired was "caused by" Ford's misappropriation as required by the MUTSA. *See* Mich. Comp. Laws § 445.1904. Additionally, such an approach did not prevent Ford from putting forth the evidence and argument before a jury that it seeks; the burden just did not rest with InterMotive to adduce such evidence in this case. Accordingly, this Court finds no reversible error in the district court's instructions, and no basis to award Ford judgment as a matter of law or a new trial on this issue.

ii. Sufficiency of the evidence

Ford further asserts that "[e]ven assuming the jury was properly instructed on InterMotive's burden to prove unjust enrichment caused by the trade secret, the jury's conclusion that *all* of Ford's UIM sales—and hence all of its UIM profits—were caused by the UIM's use of programmable inputs was unsupported by the record." First Br., ECF No. 38, 43 (emphasis in original). Ford argues that InterMotive did not proffer evidence that all of Ford's UIM sales were attributable to the UIM's use of programmable inputs, and accordingly, the jury's award of Ford's entire profits from the modules—the $13,209,300 damages figure—must be vacated. InterMotive responds that when viewing the burdens of proof properly in this case—i.e., that the burden was on InterMotive to show gross sales caused by the misappropriation, and then the burden shifted to Ford to prove offsets and deductions—there is ample evidence in the record to support the jury's award.

When considering this issue in Ford's Rule 50(b) motion, the district court determined that "[t]he jury could have reasonably found that Ford's modules sales (and therefore module profits) were caused by Ford's use of the trade secret, and that the stipulated number of Ford's module sales represents the amount of additional module sales." Order Denying JMOL, R. 295, Page ID # 13257. Although this Court reviews the denial of a Rule 50(b) motion de novo, the Court agrees with the district court's assessment of the record and finds no basis to disturb the jury's verdict.

At trial, InterMotive adduced evidence that Ford promoted its new module with programmable inputs in advertisements, specifically highlighting the advancements the UIM

provided over others in the market. InterMotive further put forth testimony that "a customer who orders a Ford [UIM] has to specifically select that feature," and it was "not part of any package that's offered by Ford." Trial Tr. Vol. 4, R. 250, Page ID # 9523–24. While Ford points to contrary evidence, it was within the province of the jury to credit this testimony and these advertisements, and conclude from them that every module Ford sold was specifically selected by a customer due to its advertised programmable inputs feature.

C. The Lanham Act Award

1. Standard of Review

InterMotive challenges the district court's denial of its motion under Rule 59(e) to amend the final judgment to restore the jury's unfair competition award under the Lanham Act. The denial of a Rule 59(e) motion is typically reviewed for abuse of discretion, "which occurs when a district court relies on clearly erroneous findings of fact or when it improperly applies the law." *Nolfi v. Ohio Ky. Oil Corp.*, 675 F.3d 538, 552 (6th Cir. 2012). "However, to the extent that the motion to alter or amend was based on an erroneous legal doctrine, the standard of review is *de novo*." *Nat'l Ecological Found. v. Alexander*, 496 F.3d 466, 476 (6th Cir. 2007). Since the district court relied upon "both the record at trial and … [legal] authority" in denying InterMotive's motion, Order re 285 Mot., R. 296, Page ID #13317, the district court's factual findings are reviewed for abuse of discretion, and its application of legal doctrine is reviewed de novo.

2. Analysis

"A party is not entitled to recover twice for the same loss, even if the party would otherwise be able to recover for that loss under separate theories of liability." *Johnson v. Howard*, 24 F. App'x 480, 484–85 (6th Cir. 2001) (citing *General Tel. Co. v. EEOC*, 446 U.S. 318, 333 (1980); *Braley v. City of Pontiac*, 906 F.2d 220, 224 (6th Cir. 1990)). In its final judgment, the district court found that "to prevent double or duplicative recovery of Ford's profits for both trade secret misappropriation and unfair competition under the Lanham Act, InterMotive shall not separately recover the jury's award of $349,867.00 for unfair competition under the Lanham Act because that amount represents a percentage of Ford's profits which has

already been included in the $13,209,300 award for trade secret misappropriation representing the full amount of Ford's profits." Final J., R. 282, Page ID # 11652. InterMotive argues that this finding is inconsistent with the law of this circuit, the Lanham Act, and the authority the district court relied upon.

In both its motion before the district court and its appeal, InterMotive relies chiefly on this circuit's prior decision in *La Quinta Corp. v. Heartland Props. LLC*, 603 F.3d 327 (6th Cir. 2010). In *La Quinta*, this Court upheld an award of both liquidated damages for breach of contract and treble damages for trademark infringement, determining that:

> [Appellee's] claims for breach of contract and trademark infringement are distinct actions, based on separate conduct and addressing disparate harms. In addition, as we have determined, the liquidated damages award fell short of the $430,000 in lost royalties that [Appellee] would have received over the remainder of the license term and, consequently, was not tantamount to a double recovery.

Id. at 345.

InterMotive asserts that the trade secret misappropriation in this case "is distinct and separate" from trademark infringement, because of the "two distinct acts leading to two distinct wrongs:" the theft of InterMotive's UIM technology and the damage to its brand by applying an infringing mark to a similar product. Second Br., ECF No. 42, 31–32. InterMotive argues that the district court erred in not finding that *La Quinta* authorizes it to recover both jury awards in this case on that basis, and in relying on Federal Circuit precedent to reach the opposite result.

The district court considered how the jury was instructed to "separately assess the amount of Ford's profits that InterMotive was entitled to recover, without regard to duplication or overall recovery." Order re 285 Mot., R. 296, Page ID # 13310. With the context of this instruction, the district court found that "the jury awarded the entirety of Ford's profits on duplicative numbers of Ford's sales." *Id.* at 13311. It reached this conclusion by noting that the jury awarded $13,209,300 for trade secret misappropriation, which is "the exact amount [Ford's expert] Rinke calculated for the entirety of Ford's profits on sales of 92,360 modules worldwide," and that the jury awarded $349,867 for unfair competition, which is "the exact amount Rinke calculated for

the entirety of Ford's profits on three percent of sales of 81,554 modules in the United States."[3] *Id.* The district court ultimately found *La Quinta* inapposite to these facts, since "InterMotive chose to seek only coextensive damages measured by Ford's profits, and it turned out that the jury awarded all of Ford's profits for trade secret misappropriation in the amount of $13,209,300." *Id.* at 13314.

This Court agrees with the district court's interpretation of *La Quinta*, and of the differences these facts present. In *La Quinta*, this Court treated as significant the fact that "the liquidated damages award fell short" of the lost royalty award the plaintiff could have otherwise received over the remainder of the license term. 603 F.3d at 345. In addition, the *La Quinta* court was concerned with the incentives created by cabining the damages award to a single period—when the defendant breached the contract—when there was separate harm caused by the defendant's behavior in a second period—when the defendant became a "hold over" in the space after the agreement between the parties was terminated. *Id.* at 344–45. No such situation exists here, where the trade secret misappropriation and unfair competition occurred at the same time and gave rise to the same pool of profits of which InterMotive sought disgorgement. The other cases InterMotive relies on present different factual situations, are not binding on this Court, or both.

InterMotive further asserts that this Court should not be persuaded by the Federal Circuit precedent on which the district court relied. However, the *Texas Advanced Optoelectronic Sols., Inc. v. Renesas Electronics America, Inc.* case cited by the district court determined that a jury verdict constituted an impermissible double recovery on very similar facts. 895 F.3d 1304 (Fed.

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[3]InterMotive asserts for the first time in its sur-reply that Ford's "argument" that the jury awarded the full amount of Ford's profits in its $13.2 million award is "speculative," because "[n]o one knows with certainty how the jury arrived at the $13.2 million number or what it represents." Fourth Br., ECF No. 54, 3. This point from InterMotive ignores that this is a conclusion the district court reached in denying its Rule 59(e) motion, having reviewed the trial record and the verdict form, not just an argument from Ford, and was not raised until the final brief.

It would greatly discredit the jury's choosing of the exact numbers from Rinke's expert report to say it is only "speculative" that these numbers were intended by the jury to be Rinke's estimations of the entire module profit pool and the U.S. profits from InterMotive's market share. Further, InterMotive itself acknowledged that the jury's selection of the $349,867 damages figure for unfair competition strongly suggests that the jury accepted Rinke's analysis. *See, e.g.,* Mot. for Enhancement, R. 257, Page ID # 10485 ("Ford told the jury that 3% of Ford's module profits was $349,867, which is what the jury awarded InterMotive—to the dollar.").

Cir. 2018). In *Texas Advanced*, the Federal Circuit considered an award for patent infringement and trade secret misappropriation, wherein:

> [Plaintiff's] expert calculated a disgorgement award for the trade secret misappropriation in which *all* profits made from sales of the infringing products (plus all profits made from sales of additional products) would go to [the plaintiff]. The expert calculated a reasonable royalty for the patent infringement based on a fraction of the total profits for those infringing products. The jury chose to award the full amount ($48,783,007) of the expert's proposed disgorgement award for the trade secret misappropriation and a partial amount ($73,653.51) of the expert's proposed royalty for the patent infringement ($105,219).

Id. at 1328. On these facts, the Federal Circuit determined that "[t]he royalty award for patent infringement was therefore duplicative of some portion of the disgorgement award for trade secret misappropriation, to the extent the awards cover the same period," and vacated the award of damages. *Id.* at 1328–29. Such a situation is exceedingly similar to this case, wherein the district court observed that the jury awarded a fraction of Rinke's figures for Ford's profits from the sale of the accused modules for the unfair competition, and the entirety of Rinke's estimation of Ford's profits for the sale of the exact same accused modules for trade secret misappropriation.

InterMotive finally argues that the district court decision is "inconsistent with the Lanham Act section on enhanced remedies," because under 15 U.S.C. § 1117(a), "a court is empowered to increase an award *well beyond* the defendant's actual profits." Second Br., ECF No. 42, 32 (emphasis in original). InterMotive asserts that because the Lanham Act does not set a limit on upward adjustments to awards based on a defendant's profits, "the district court erred in holding that defendant's profits establish an upper limit on what the court can award." *Id.* Ford responds that "[t]he enhancement power presupposes a valid, non-duplicative base award; it does not create a right to recover profits already fully disgorged through another cause of action." Third Br., ECF No. 53, 35.

Under 15 U.S.C. § 1117(a), "[i]f the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case."

While this is an interesting argument from InterMotive, we are ultimately unpersuaded that this provision regarding enhancement of damages should mean that a double recovery for disgorgement of the same profits twice is permissible in this situation—in particular, where there was no such finding by the district court of the inadequacy of these damages.

InterMotive further argues on appeal that the district court should have awarded it prejudgment interest on the cancelled Lanham Act award. Since the Court holds that the district court did not err in its cancellation of the Lanham Act award, it follows that the district court also did not err in declining to award prejudgment interest on this cancelled award, based on this cancellation. The Court therefore does not reach the question of whether prejudgment interest can be awarded on Lanham Act awards as there is no principal amount on which to award prejudgment interest in this case.

D. Enhanced Damages

1. Standard of Review

InterMotive next challenges the district court's denial of its motion for enhanced damages for trademark infringement. We review a trial court's decision to enhance, or not enhance, a damages award "under the deferential abuse-of-discretion standard." *Max Rack, Inc. v. Core Health & Fitness, LLC*, 40 F.4th 454, 473 (6th Cir. 2022). A district court abuses its discretion if its justification rests on a misunderstanding of the applicable law. *Id.*

2. Analysis

InterMotive filed a post-trial motion asking the district court "to increase the Lanham Act profit awarded by the jury from $349,867 to $15,000,000." Mot. for Increased Profit Award, R. 257, Page ID # 10473. The district court denied this motion.

The Lanham Act provides broad discretion to a court to enhance damages: "If the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case. Such sum in either of the above circumstances shall constitute compensation and not a penalty." 15 U.S.C. § 1117(a). In assessing the equities of a

case to determine if an enhancement is appropriate, courts are instructed to consider a wide range of factors, among which "a showing of willful infringement" and "the 'defendant's mental state [are] highly important.'" *La Bamba Licensing, LLC v. La Bamba Authentic Mexican Cuisine, Inc.*, 75 F.4th 607, 610 (6th Cir. 2023) (quoting *Romag Fasteners, Inc. v. Fossil, Inc.*, 590 U.S. 212, 219 (2020)). Additional factors include "whether sales were diverted, the adequacy of other remedies, any unreasonable delay by the plaintiff in asserting its rights, the public interest in making the misconduct unprofitable, and 'palming off,' i.e., whether the defendant used its infringement of the plaintiff's mark to sell its own products to the public through misrepresentation." *La Quinta*, 603 F.3d at 343. "On the one hand, the court may increase a profits award for a compensatory reason, such as a concern that the award does not encompass the defendant's full profits." *Max Rack, Inc.*, 40 F.4th at 473. "On the other hand, the court may not increase a jury's profits award for a punitive reason." *Id.*

InterMotive asserts that the district court's denial of its motion for enhancement, where the jury found Ford's trademark infringement was willful, was an abuse of discretion. InterMotive argues that the district court erred in its determination that InterMotive did not show that a need for deterrence supported its fee enhancement request, and takes issue with how the district court considered the jury's award and Ford's damages evidence. The Court does not find that InterMotive has raised any points which demonstrate that the district court applied the wrong law or otherwise abused its discretion in declining to enhance damages.

First, regarding deterrence, the district court noted that there is an open question regarding whether deterrence is a proper basis for increasing a jury's profits award under § 1117(a). *See, e.g., La Bamba Licensing, LLC*, 75 F.4th at 613 ("[W]e have suggested, though perhaps not held, that various theories, including unjust enrichment, deterrence, and compensation can support an award of profits under the Lanham Act.") (internal citation omitted). The district court ultimately decided to put aside that question, because it found that "InterMotive only offers unsupported speculation" in its arguments about deterrence such that it would not be warranted in this case even if permissible. Order re 257 Mot., R. 280, Page ID # 11642. This Court employs the same approach: without deciding the question of whether deterrence is a compensatory or punitive reason to increase profits—and thus whether it is

permissible or disallowed under § 1117(a)—the Court finds that the district court did not abuse its discretion in determining that InterMotive's speculation about Ford's behavior did not support its requested enhancement. InterMotive made only conclusory arguments that "Ford will not be deterred from future misconduct unless it is forced to disgorge more profit" in its motion for enhancement, which the district court was well within its discretion to find unconvincing. Mot. for Enhancement, R. 257, Page ID # 10481.

Second, regarding the district court's treatment of the jury's award, the Court does not find that it erred in its analysis of Rinke's apportionment evidence and the jury's ultimate award of $349,867 for unfair competition. InterMotive takes issue with the district court using the word "overturn" to characterize its request for enhancement. The district court summarized InterMotive's motion as "ask[ing] the Court to uphold the jury's finding that Ford's infringement was willful but otherwise overturn the jury's profits award and its underlying findings." Order re 257 Mot., R. 280, Page ID # 11622. InterMotive also takes issue with the district court's focus on its desire for a jury trial. The district court considered the procedural history of this case and the behavior of the parties, pointing out that InterMotive fought to bring this issue before a jury rather than have the district court determine the entire issue of damages in a bench trial.

Although the use of the word "overturn" from the district court is not ideal, this Court is satisfied that it applied the correct law and did not abuse its discretion in declining to enhance InterMotive's damages award for trademark infringement and unfair competition. The district court acknowledged it had the authority to enhance the damages award, and even defended the enhancement InterMotive sought against Ford's claims that it was an "unprecedented" quantity, acknowledging that "[i]n the context of this case, numerical comparisons can cut both ways. Ford's contention that a forty-three times multiplier produces an excessive profits award is simply the inverse of InterMotive's contention that a three percent multiplier produces an inadequate profits award." *Id.* at Page ID # 11623 n.2. However, after considering InterMotive's argument regarding Ford's apportionment evidence, the district court determined that "it would violate principles of fundamental fairness to overturn the jury's finding that Ford met its burden of proving apportionment." *Id.* at Page ID # 11633. In other words, the district court considered "the circumstances of the case"—primarily, that the jury's award for unfair

competition aligned directly with Rinke's apportioned analysis for Ford's module sales—and determined that this "amount of the recovery based on profits" was not "inadequate" such as to warrant an enhancement. 15 U.S.C. § 1117(a).

The district court noted that InterMotive had sought a jury trial on the disgorgement issue as a part of its consideration of the parties' conduct before the court, and not as an improper or dispositive avoidance of its own power to adjust the damages award under § 1117(a). The purpose of the district court's consideration there, it is clear, was to conclude that InterMotive was then asking for a determination from the court that the profits the jury determined should be disgorged were inadequate, despite their main reason for this purported "inadequacy" being disagreement with Rinke's damages figure. The district court expressly stated it viewed InterMotive's request as an attempt to have the court "redecide" the same issue put before the jury, rather than giving the court additional circumstances to consider which may appropriately give rise to an enhancement of the jury's award. Order re 257 Mot., R. 280, Page ID # 11630. Accordingly, the district court found, within its sound discretion, that it had no "just" basis to enhance the damages award under § 1117(a).

E. Disgorgement Remedy

1. Standard of Review

InterMotive's challenge on this issue arises from the exclusion of expert testimony. The special master in this case issued a Report & Recommendation ("R&R") recommending that the district court exclude the testimony of InterMotive's expert, Mark Robinson, where he applied a disgorgement of profits damages theory to InterMotive's breach of contract claim. This recommendation was made on the basis that disgorgement is not available as a remedy for breach of contract under Michigan law. InterMotive timely filed objections to the R&R, challenging the exclusion of Robinson's testimony on this basis. The district court overruled these objections and adopted this portion of the R&R.

A trial court's decision to admit or exclude expert testimony under *Daubert* is typically reviewed for abuse of discretion. *Barnes v. Kerr Corp.*, 418 F.3d 583, 588 (6th Cir. 2005) (citing *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 139 (1997)).

However, InterMotive asserts that this issue should be reviewed de novo, since the district court made a determination of the availability of specific relief—whether disgorgement is an available remedy for breach of contract under Michigan law. In other words, the district court was making a legal determination. Second Br., ECF 46, 43 (citing *Price v. High Pointe Oil Co.*, 828 N.W.2d 660, 663 (Mich. 2013) ("Whether noneconomic damages are recoverable for the negligent destruction of real property presents a question of law, which this Court reviews *de novo*.")). This claim fails even under a de novo standard of review, for the reasons discussed below.

2. Analysis

InterMotive argues that: (1) there is Michigan law supporting a disgorgement remedy for breach of contract, which the district court erred by disregarding; (2) public policy supports a disgorgement remedy for breach of a confidentiality agreement; and (3) the district court ignored its equitable power to award disgorgement remedies regardless of what remedies Michigan law awards for breach of contract.

In support of its first claim, that Michigan law supports a disgorgement remedy for breach of contract, InterMotive relies almost exclusively on a fifty-year-old district court case. *See Structural Dynamics Rsch. Corp. v. Eng'g Mechs. Resch. Corp.*, 401 F. Supp. 1102 (E.D. Mich. 1975). It is true that in this case, the Eastern District of Michigan awarded a reasonable royalty for the breach of a nondisclosure agreement relating to confidential business information, and stated that the defendants "must refund for their breaches" after misusing confidential information. *Id.* at 1119. However, the *Structural Dynamics* court made no citation to Michigan law in reaching this conclusion, instead relying on Fifth and Sixth Circuit law in the paragraphs discussing this remedy. *Id.* In addition, the age of this case and the fact it is not binding precedent on this court significantly weaken InterMotive's argument.

This argument from InterMotive cannot overcome the clear delineation the Michigan Supreme Court has drawn between "a breach-of-contract action, [where] an injured party may seek damages for an injury caused by another party's breach of a contractual obligation," and "unjust enrichment, by contrast… [where] the correction, or remedy, is [] not compensatory

damages, but restitution." *Wright v. Genesee Cnty.*, 934 N.W.2d 805, 810 (Mich. 2019). While *Wright* does not outright say that disgorgement can never be a breach of contract remedy, it does set forth that under Michigan law, damages for breach of contract are considered distinct from restitution for unjust enrichment.

Further, this Court has long recognized that federal courts "should be extremely cautious about adopting substantive innovation in state law." *Combs v. Int'l Ins. Co.*, 354 F.3d 568, 578 (6th Cir. 2004) (internal citation omitted). Without some express statement from a Michigan court that disgorgement is an available remedy for breach of contract, it is not advisable under *Erie* for the federal courts to expand this remedy.

This consideration also strongly counsels against adopting InterMotive's second argument in favor of its disgorgement remedy. InterMotive cites a Restatement provision which "reports a policy of discouraging parties from making profitable, opportunistic breaches of contract, and particularly as to non-disclosure agreements." Second Br., ECF No. 46, 46 (citing Restatement (Third) of Restitution and Unjust Enrichment § 39 (2011)). InterMotive asserts that "there is a compelling policy reason for Michigan to discourage opportunistic breaches of non-disclosure agreements," such that "the district court's position on Michigan law is mistaken as a matter of policy." *Id.* This argument from InterMotive is unpersuasive where Michigan courts have not themselves adopted § 39 or otherwise indicated this policy statement is a goal they aim to achieve with Michigan law.

Finally, InterMotive asserts that the district court "ignored its equitable power to award disgorgement remedies notwithstanding what remedies Michigan law awards for breach of contract." *Id.* InterMotive bases this argument primarily on the Supreme Court case *Snepp v. U.S.*, 444 U.S. 507 (1980) (per curiam). As is relevant here, in *Snepp* the Supreme Court considered a case where a former CIA agent had breached multiple employment agreements by publishing a book about his time in the CIA without getting prepublication clearance from the agency. *Id.* at 508. The district court imposed a constructive trust for the government's benefit on all profits from Snepp's book. *Id.* The court of appeals then refused to find a constructive trust. *Id.* at 509. The Supreme Court reversed the court of appeals, finding that the constructive trust was warranted in this situation where pursuing other remedies posed "unacceptable risks" to

national security. *Id.* at 515. InterMotive argues that under *Snepp*, it should be entitled to equitable relief because legal relief is impossible for the harm it suffered. The Court does not find that the district court erred in not applying *Snepp* to this situation. The "irreparable harm" the Supreme Court found that Snepp had inflicted upon national security as well as the other unique facts of that case make it a poor comparison to this one. *Id.* at 509.

F. InterMotive's Implied Contract Theory

1. Standard of Review

This issue arises from the grant of a motion in limine. Ford filed a motion in limine asking the district court to exclude evidence and argument at trial concerning what it characterized as a "new 'implied contract' theory InterMotive never disclosed in this case and [] contradicted by what was disclosed in this case." Ford's Mot. in Lim. Regarding Implied License, R. 197, Page ID # 7402. In response to this motion, InterMotive argued that it was an improper attempt to attain another motion for summary judgment, and stated that its claim for breach of implied contract related to a contract implied at *law*, not implied in *fact* (as Ford had characterized the claim). The district court issued an oral ruling on the motion, siding with Ford. The district court stated that it had been under the same impression as Ford that this claim related to a contract implied in fact, not a contract implied at law. The district court therefore agreed with Ford's characterization that this theory of contract implied at law was new, and granted Ford's motion in limine excluding it from trial.

A district court's ruling on a motion in limine is typically reviewed for abuse of discretion. *Burley v. Gagacki*, 729 F.3d 610, 620 (6th Cir. 2013). InterMotive asserts that "because the relief was not evidentiary but a decision on [the] merits of the claim the proper standard of review is *de novo*." Second Br., ECF No. 46, 47.

This Court has indeed established that when a ruling on a motion in limine "bar[s] the jury from hearing one side's argument,… [s]uch non-evidentiary legal issues must be decided in the context of a motion for summary judgment… which in turn is reviewed *de novo*." *Audio Technica U.S., Inc. v. United States*, 963 F.3d 569, 575 (6th Cir. 2020) (internal citations omitted). However, in the *Audio Technica* case, the Court applied a de novo standard of review

because the district court had substantively resolved the issue of judicial estoppel in favor of the plaintiff by granting its motion in limine. *Id.*

In this case, the district court did not make a legal determination that InterMotive's theory of implied-in-law contract could or could not succeed. It instead determined that based on the procedural history of the case, "Ford was not put on notice that InterMotive asserts an implied-in-law contract," and as such agreed with Ford that evidence and argument related to that claim should be excluded from trial. Final Pretrial Tr., R. 218, Page ID # 8198. Accordingly, the ruling did not relate to the legal efficacy of the claim, or any determination of whether or not a genuine issue of material fact existed regarding it. Although Ford also urged such legal arguments in its motion, and again in its response on appeal, these legal arguments were not the basis for the district court's decision. Accordingly, none of the reasons underpinning this Court's previous decisions disallowing parties from litigating substantive issues via motions in limine, such as "depriv[ing] their opponents of the procedural protections that attach at summary judgment," and not "allow[ing] for full development of the evidence," *Louzon v. Ford Motor Co.*, 718 F.3d 556, 561–62 (6th Cir. 2013), fit this situation neatly.

This determination by the district court ultimately more closely resembles a standard ruling on a motion in limine, directing itself towards "exclud[ing] anticipated prejudicial evidence before the evidence is actually offered," *id.* at 561, namely, the evidence related to an undisclosed claim. Accordingly, the Court applies the abuse of discretion standard and considers whether the district court abused its discretion in determining that InterMotive's contract implied at law claim had not been properly disclosed prior to Ford's filing of its motion in limine. The Court does not consider the legal merits of InterMotive's implied contract theory.

2. Analysis

The district court did not abuse its discretion in granting Ford's motion in limine and excluding this claim from trial. That is because the district court did not abuse its discretion in reviewing the record and determining that Ford—as well as the district court itself—had not been put on adequate notice that InterMotive was asserting such a claim.

In granting Ford's motion in limine, the district court cited InterMotive's counterclaim, InterMotive's case citations during summary judgment briefing, and the *Daubert* proceedings.

InterMotive mentions its implied contract theory in just one paragraph of its counterclaims, included in Count III, titled "Breach of Contract." The paragraph which mentions the implied contract theory reads:

> Apart from the NDA Agreement attached as Exhibit A to Ford's Amended Complaint, Ford also breached an implied agreement to keep InterMotive's technology confidential when it accepted the sample product from InterMotive that was marked "CONFIDENTIAL." Under the circumstances, Ford knew or should have known that InterMotive intended the sample to be treated as confidential, or be told by Ford that Ford would not treat it as confidential. Ford should not have taken the sample under the condition of confidentiality that was at least implied – if not explicit, unless Ford intended to respect the confidentiality.

InterMotive's Second Am. Countercls., R. 42, Page ID # 995–96. The district court found that these pleadings amount to an allegation "that Ford 'breached an implied agreement' with reference to the circumstances that implied what InterMotive intended and what Ford intended," and concluded that such allegations are "the definition of an implied-in-fact contract." Final Pretrial Tr., R. 218, Page ID # 8199.

The distinction between a contract implied in fact and a contract implied in law, under Michigan law, is that "[t]he first does not exist, unless the minds of the parties meet, by reason of words or conduct. The second is quasi or constructive, and does not require a meeting of minds, but is imposed by fiction of law." *Wrench LLC v. Taco Bell Corp.*, 256 F.3d 446, 456 (6th Cir. 2001) (quoting *Cascaden v. Magryta*, 225 N.W. 511, 512 (Mich. 1929)). The district court determined that the wording of InterMotive's counterclaim suggested InterMotive was alleging there was a meeting of the minds, which would only be required in a claim for contract implied in fact.[4] InterMotive asserts that it "clearly identified that it was seeking breach of a contract-in-law claim in 2022, among other places." Second Br., ECF No. 42, 48 (citing InterMotive's Mot.

[4]This understanding of the counterclaim by the district court is reaffirmed throughout earlier portions of the record, such as when it described InterMotive's claim as "maintain[ing] that the 2011 [C]DA was extended by mutual assent and that a separate, implied contract existed between the parties." Order re Ford's Mot. for Summary J., R. 65, Page ID # 1788.

for Recons., R. 183, Page ID # 6825). On the page InterMotive cites, InterMotive argued that the district court should consider a case wherein disgorgement was permitted as a remedy for a contract-in-law claim, in support of its argument that disgorgement is a permissible remedy for its breach of contract claim. This citation supports the district court's determination that InterMotive had been unclear about its purported contract-in-law theory, not the opposite.

The district court further considered InterMotive's citation to *Wrench LLC v. Taco Bell Corp.*, 51 F. Supp. 2d 840, 848 (W.D. Mich 1999), in opposition to Ford's motion for summary judgment for breach of contract. The district court noted that InterMotive cited the page of this case wherein the Western District of Michigan found that "a genuine issue of material fact regarding whether an implied-in-*fact* contract existed between the parties." Final Pretrial Tr., R. 218, Page ID # 8199 (emphasis added). InterMotive urges that the district court misunderstood its citation, and that it only cited this case "to show that there were fact issues preventing summary judgement." Fourth Br., ECF No. 54, 20. However, the parenthetical following this case citation supports the district court's confusion, reading: "Summary judgement denied to defendant when there was evidence of an implied contract." InterMotive's Opp'n to Ford's Mot. for Summary J., R. 53, Page ID # 1488.

Finally, the district court considered InterMotive's comments about this implied contract claim in the *Daubert* proceedings, similarly finding that such comments indicated InterMotive was asserting a contract implied in fact.

InterMotive is correct that "[m]otions *in limine* are not proper procedural devices for the wholesale disposition of theories." Second Br., ECF No. 42, 48 (citing *Dunn ex rel. Albery v. State Farm Mut. Auto. Ins. Co.*, 264 F.R.D. 266, 275 (E.D. Mich. 2009)). But it was on that basis of lack of notice, rather than a disposition on the merits of InterMotive's legal theory, that the district court granted the motion in limine and precluded InterMotive from presenting this theory at trial. Such determination was not an abuse of discretion by the district court, as it was based upon a reasonable reading of the record and consideration of InterMotive's conduct thus far in the case. InterMotive's arguments to the contrary are unavailing.

III. CONCLUSION

For the reasons stated above, the district court's rulings are **AFFIRMED** on all issues raised by Ford and InterMotive.