

Cardinals Face Rough Road In First-Ever Sports Spying Probe

By Zachary Zagger

Law360, New York (June 16, 2015, 10:50 PM ET) -- With Major League Baseball's St. Louis Cardinals now the target of a federal investigation into the hacking of a rival team's database, the team could face both civil and criminal liability as the sports world watches its first case of corporate espionage unfold.

The MLB confirmed Tuesday that federal investigators are probing last year's breach of the Houston Astros' internal database, which reportedly includes proprietary information on players and prospects, scouting reports and other internal communications on trade talks. The FBI and U.S. Department of Justice have targeted the Cardinals in the investigation and have already subpoenaed email records from the team and the league, according to The New York Times.

The nature of the alleged hack has yet to come into focus, although the Times reports it could have been as simple as Cardinals officials mining a list of passwords used by former colleagues who left the team to work for the Astros. But what's clear is that federal authorities are looking to prosecute cybercrimes and that no actors in the hacking are likely to come out unscathed.

"We have clearly seen an uptick in the use of computers to gather information and commit wrongdoing and, with that, the response from law enforcement to regulate and enforce the laws surrounding that more frequently," attorney Alex Spiro of Brafman & Associates, a former prosecutor in Manhattan, told Law360.

"If they do find criminal wrongdoing, I would expect them to seek charges," Spiro said.

The possible hacking followed the Astros' hiring of Jeff Luhnow from the Cardinals' front office as its general manager in 2011 and came amid an increasing emphasis on data analytics to evaluate players and make strategic decisions in the "Moneyball" era of professional baseball, named for Michael Lewis' book and the subsequent movie.

At the Astros, Luhnow developed a widely reported player database called Ground Control that compiled all of the contract information, scouting reports and other proprietary analysis of every player in the organization.

Things took a turn last year when the team said it had discovered a breach of its internal database and proprietary data. The team said at the time that it had informed MLB, which in turn alerted the FBI.

Numerous instances of this type of hacking have occurred in the corporate world and even between governments, and experts say they aren't surprised to see it alleged now between teams that regularly compete against one another on the field.

The Cardinals have been one of the most successful teams in baseball, with 11 World Series titles, most recently in 2011. The team has the best record in baseball this year. Meanwhile, the Astros, which used to be a division rival of the Cardinals before moving to the American League, have completed a turnaround in recent years under Luhnow and are leading the AL West.

"The public is getting accustomed to seeing professional sports treated as just another big business by law enforcement, with all the criminal investigations, prosecutions and internal investigations that entails," said Clay Wheeler, a partner at Kilpatrick Townsend & Stockton LLP and a former federal prosecutor

"What is interesting about what's being reported is that in most ways it's an old story — there have been almost identical fact patterns for years in corporate espionage cases outside of professional sports," Wheeler said, noting that he has seen several cases of a breach stemming from an employee moving from one company to another.

Wheeler said that on a criminal level, the Astros data could be considered trade secrets, which are defined under federal law as "all forms and types of financial, business, scientific, technical, economic or engineering information" that the owner has taken "reasonable measures" to keep secret and that "derives independent economic value, actual or potential, from not being generally known to ... the public."

Theft of trade secrets, also called corporate espionage, carries a fine of up to \$5 million for organizations and for individuals is a felony that could mean 10 years in prison.

Experts also say criminal charges could be brought for the act of hacking itself under the federal Computer Fraud and Abuse Act, which outlaws the accessing of a computer used in interstate commerce without authorization to obtain something of value.

In addition, the Cardinals or other actors could face civil claims. However, a lawsuit between the teams would be difficult given that both are part of Major League Baseball. The MLB constitution mandates that teams handle disputes internally with the MLB commissioner as the arbitrator, according to Stephen F. Ross, a sports law expert at Penn State University Dickinson School of Law.

Still, Ross said, there have been exceptions leading to litigation in the courts. And at the very least, the commissioner can issue some sort of punishment if he finds there has been conduct detrimental to the league.

The Cardinals issued a statement Tuesday saying the team is "aware of the investigation into the security breach of the Houston Astros' database. The team has fully cooperated with the investigation and will continue to do so."

However, the team declined to comment further, saying it is "an ongoing federal investigation."

While the details of the investigation of the Astros' database breach continue to emerge, the sports world will be watching how the situation plays out.

"This is the first time that we have a reported cyber incident affecting a sports team," said Craig Newman, chair of Patterson Belknap Webb & Tyler LLP's privacy and data security practice. "Up until now we have seen big retailers and U.S. government databases getting hacked, but now we have federal investigators looking at one of the most successful franchises in Major League Baseball. It is a sad day for professional sports."