

# Envestnet's five-year legal slugfest with fintech over alleged 'Trojan Horse' theft of killer app cleared for trial, likely a speedbump, not a wrench, for Bain acquisition or Yodlee sale

Judge Jennifer L. Hall dismissed two summary judgment motions and a series of futile counterclaims that likely paves the way for a settlement

**Author** [Lisa Shidler](#) October 23, 2024 at 12:37 AM



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Jennifer Hall: 'Certain Envestnet executives may have played an oversight role at subsidiary Yodlee Inc.'

A fintech small-fry's five-year legal odyssey over allegations that fintech giant Envestnet licensed its product solely to create a copycat version, has cleared its last legal hurdle before trial – or, more likely, a settlement.

Judge Jennifer L. Hall greenlit a jury trial sought by plaintiff FinancialApps (FinApps), after dismissing defendant Envestnet's second of two motions for summary judgment, which could have ended the case if either had prevailed.

The ruling could weigh on Bain Capital's \$4.5 billion Envestnet acquisition -- slated to close any day now. But industry observers say the suit's \$100-million damage claim is unlikely to derail the multi-billion dollar deal. See [Envestnet shareholders make it official, they want out of public shares, clearing Bain Capital to press forward -- leaping other hurdles and getting the TAMP at a cash-in-hand discount](#)

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“One would imagine that the suit has been calculated into their plan,” says Ari Sonnenberg, an attorney with Wagner Law Group.



Marc E. Kasowitz: Looking forward to a trial.

"While the \$100 million suit, of course, is a large

one, the Bain deal is a \$4.5 billion one, so while I'm sure the lawsuit factors in somewhere, I don't think Bain will walk away from the deal just because of the suit's progression."

## Legal recourse

FinApps Lawyer Marc Kasowitz, who has been vocal about the case since its 2019 filing, issued a press release touting the victory and distributed relevant documents to news outlets, including RIABiz.

Envestnet sued Kasowitz for defamation over statements he made to the media, but Hall dismissed the case in a separate opinion for failing to meet the legal standard for "*per se* defamation."

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"We are pleased with the Court's well-reasoned opinions, and look forward to vindicating FinancialApps's rights at trial," the lawyer stated in the release.



Joel Bruckenstein: Surprised this case has not 'gone away.'

Envestnet declined to comment on the judge's ruling but has addressed the lawsuit in regulatory filings. It maintains that the "allegations are without

merit," and vowed to "continue to defend the claims against it."

But how much further Evestnet intends to pursue the matter is an open question. Two cases are currently pending. One is against Envestnet and the other is against its Yodlee subsidiary.

## Settlement shot

The latter case is likely the more problematic. Bain is reportedly interested in spinning off Yodlee and may want to remove any overhang on the deal by resolving outstanding matters like the FinApp suit.

"I'm sure FinancialApps has given some consideration to the pending Bain deal in its decisions related to the suit," says Sonneberg.



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"From the Court's perspective, there are factual elements to FinancialApp's lawsuit that give it merit to proceed to trial, and that is the chief reason why FinancialApp's isn't just giving up."

Dismissal of the summary judgments gives FinApp more leverage in a settlement, although a trial is often described as a crap shoot for both sides, according to legal references.

"The settlement value of a case increases when a motion for summary judgment is denied. Thus, denials of summary judgment up the ante in the litigation game," [according to the Loyola University Chicago Law Journal](#).

"FinancialApps thinks it could still eke more out of offer overtures as a result of the pending Bain deal, but that is pure conjecture," Sonneberg says.

## Bitter falling out

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FinApps and Envestnet seemed to be a perfect match, and the two entered into a joint services agreement in 2017.

While Yodlee aggregated a trove of data, Envestnet had no software



Ari Sonnenberg: 'I don't think Bain will walk away from the

product to capitalize on it. FinApps, however, had a killer app deal.’ that could sift the data to divine a consumer's credit rating. But the partnership disintegrated after FinApps rejected Envestnet's offer to buy the company for what it considered a “lowball” offer. The companies parted ways after Yodlee rolled out its own proprietary app.

FinApp claimed the software was a knock-off of its product and filed suit in 2019. It claimed Envestnet and Yodlee breached their agreement and misappropriated proprietary information to develop competing credit risk assessment software.

“The complaint includes claims for, among other things, misappropriation of trade secrets, fraud, tortious interference with prospective business opportunities, unfair competition, copyright infringement, and breach of contract,” according to an Envestnet summary of the case.

"For Yodlee, defendants’ business relationship with FinApps was nothing more than a Trojan Horse, deployed to gain access to and steal FinApps’ proprietary information and trade secrets, so that defendants could illicitly build their competing software products from the building blocks of FinApps’ trade secrets," the suit charged.

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## Legal slugfest

Over five years of litigation, the two sides have traded legal broadsides.

Envestnet scored an early victory in 2019 when it won the dismissal of copyright infringement,

unfair competition, and fraud claims. But FinancialApps prevailed on other counts.

A pivotal ruling came in 2021 when the Court ordered that FinancialApps’s claims against Yodlee—as well as Yodlee’s counterclaims against FinancialApps — to be tried before the judge instead of a jury under a waiver in their initial services agreement.

FinancialApps’s claims against Envestnet (and Envestnet’s counterclaim) were assigned to be heard by a jury. Fact discovery concluded in Sept 2022.



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Investnet's series of counterclaims, including one to absolve Investnet executives by pinning responsibility on Yodlee underlings, ultimately proved futile.

## Dispute affirmed

Hall's decision in September was essentially confirmation of Magistrate Judge Christopher J. Burke's Aug. 2023 fact-finding report.

Though any alleged transgression may have happened at a 'Yodlee' level, the evidence shows certain Investnet executives may have played an oversight role at subsidiary Yodlee Inc. and engaged in Yodlee's alleged misappropriation on behalf of Investnet, causing disputes that a jury should decide, the judges concluded.

"After engaging in a lengthy and thorough analysis of the evidence of record, the magistrate judge found a dispute of material fact regarding whether individuals were acting for Investnet when they engaged in acts that allegedly constituted wrongful trade secret misappropriation." Hall wrote.

The case has gone on for five years, which is unusual, says Joel Bruckenstein, who runs the popular T3 conference. "I am somewhat surprised that this case has not "gone away" or been settled."

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## Problem child

Investnet bought Yodlee in 2015 for \$590 million as part of then, founder and CEO Judd Bergman's vision to make it a cornerstone of a data-driven business strategy.

After Bergman was killed in a 2019 auto accident, his vision for a financial platform based on investor "wellness" died with him, and Yodlee has never lived up to its potential.

Wall Street analysts have pressed Investnet ever since to show how it would leverage the asset to bolster revenues and earnings. See: [This time Investnet plays most cards face up as analysts press again for cogent Yodlee deal rationalization](#)

Investnet, which provides outsourcing to 110,000 advisors, has devalued \$287 million, or 48.6%, of the \$590 million it spent acquiring Yodlee in 2015, according to an 8k and the company's earnings call on Aug. 12.