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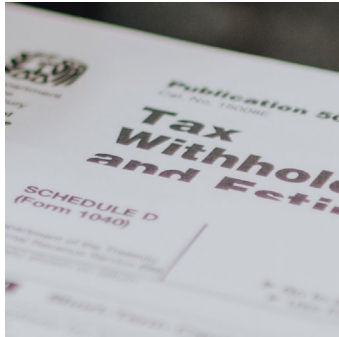
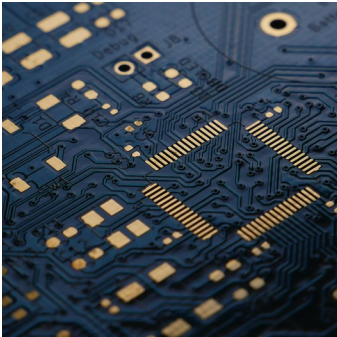
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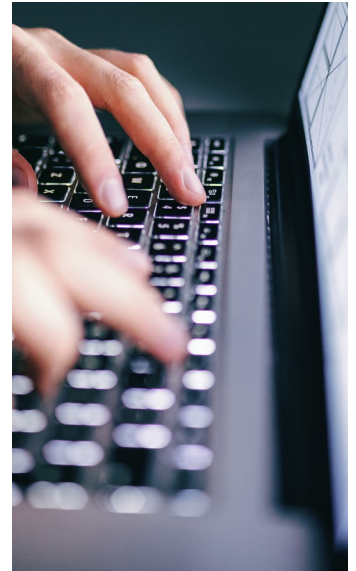
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Introduction

Welcome to the third edition of Jenner & Block's *Trade Secret Update*. Trade secret disputes continue to sit center-stage in state and federal courts with significant criminal and civil proceedings, whether it be eye-opening jury verdicts awarding hundreds of millions of dollars, or criminal prosecutions for trade secret theft appearing on the front page of national newspapers.

In the criminal context, the US Department of Justice continues to focus heavily on activities from China, resulting in numerous prosecutions of Chinese nationals for brazen theft of trade secrets. Prosecutions focused on China are expected to rise. But China is not the end of the story. Foreign nationals from other countries—as well as domestic actors—still pose a substantial threat to trade secrets belonging to US companies. The resulting DOJ prosecutions show the resources expended to protect those rights.

The civil context for trade secret actions has also remained in the limelight with some of the highest jury awards in recent years, showing that the stakes involved in trade secret disputes are some of the most serious faced by civil litigants.

This edition of the *Trade Secret Update* addresses developments in US trade secret law, discusses some of the most significant criminal and civil trade secret actions, and highlights particular interpretations of the Defend Trade Secrets Act (DTSA) and its effect on trade secret litigation since it took effect five years ago. We first describe some of the most notable recent trade secret civil decisions, including high nine-figure jury verdicts, other convincing defense wins, and reductions of awards through post-trial motions and on appeal. The Update also explains developments in the inevitable disclosure doctrine, what constitutes ownership of a trade secret to justify bringing an action, and the application of the Computer Fraud and Abuse Act where an actor exceeds his or her authority in accessing a computer system, as well as a number of issues specific to trade secret issues applying California law.

The Update also addresses international trade secret issues, such as extraterritorial application of the DTSA despite a presumption against such application, trade secret holders using the International Trade Commission forum to protect from misappropriation, and a primer on Japanese trade secret law.

What is indisputable is that trade secret issues must be front of mind for executives at nearly all US companies, or the harm to their businesses and their bottom line could be harrowing.



RECENT NOTABLE TRADE SECRET DECISIONS

Despite court slowdowns across the United States caused by COVID-19, courts of appeal and lower courts have continued to issue significant trade secret decisions over the past year. The decisions summarized below are among the most notable.

Motorola Solutions Inc. v. Hytera Communications Corp. Ltd., No. 1:17-cv-01973 (N.D. Ill. Jan. 11, 2021).

Motorola filed suit against Hytera in 2017, alleging that its former employees stole source code and technical documents before joining Hytera and that they then used that information to develop a competing line of walkie-talkies. For its part, Hytera admitted that the employees had taken some of Motorola's information, but claimed that it had not been distributed beyond them. In February 2020, after a three-month trial, a jury unanimously found in favor of Motorola and awarded Motorola \$345.8 million in compensatory damages and \$418.8 million in punitive damages for a total verdict of \$764.6 million. In January 2021, the court addressed the amount of overall damages based on arguments made regarding allocation between damages awarded for both disgorged profits and avoided research and development costs. That decision led to a reduction of the award and the corresponding punitive damages by approximately \$200 million, but leaving well over \$500 million of damages intact.

Syntel Sterling Best Shores Mauritius Ltd. v. The Trizetto Group Inc., No. 1:15-cv-00211 (S.D.N.Y Oct. 28, 2020).

A New York jury issued an \$854 million trade secret verdict against Syntel, a technology company involved in software related to insurance platforms. The parties originally had executed an agreement regarding software development, but the relationship soured, and Syntel sued for nonpayment and alleged violations of various nonsolicitation provisions. TriZetto counterclaimed, alleging that Syntel misappropriated its trade secrets and infringed its copyrights. The jury agreed, awarding TriZetto \$284.8 million in damages, plus an additional \$569.7 million in punitive damages, and rejected Syntel's claims.

Title Source, Inc. v. HouseCanary, Inc., No. 04-19-00044-CV (Tex. App. June 3, 2020, Aug. 26, 2020).

In June 2020, real estate analytics company, HouseCanary, was dealt a reversal of fortune when the Texas Court of Appeals overturned a \$700 million jury verdict awarded in 2018, finding that the jury had been wrongly instructed on elements of the Texas Uniform Trade Secrets Act. HouseCanary's trade secret claims were premised on the alleged misappropriation of its proprietary home-pricing index and other models, which it shared with insurance company Title Source (now known as Amrock) under an NDA in connection with an attempted

joint venture. HouseCanary alleged that Title Source violated the state's trade secrets act by creating its own databases and models using HouseCanary's proprietary information. At trial, the jury was instructed that it could find misappropriation of HouseCanary's trade secrets based on either a "use" theory or an "acquisition by improper means" theory. On appeal, the court held that—while the "use" theory presented a valid ground for the jury's finding of misappropriation—the "acquisition by improper means" theory was not valid under Texas precedent holding that post-acquisition breach of an agreement not to use trade secrets does not constitute "acquisition by improper means." The Court of Appeals held that, where a jury instruction mixes valid and invalid theories, a new trial is required if it cannot be determined which theory served as the basis for the jury's verdict. The court reversed the trial court's judgment. Then, after Title Source moved for reconsideration, the Court of Appeals issued a subsequent opinion withdrawing the June opinion and clarifying that, on remand, Title Source could not retry its trade secret and fraud claims unless it also retried its contractual claims. This case serves as a cautionary tale about the importance of tailoring jury instructions to fit the particular facts of the case in a trade secrets trial and being careful when deciding whether and how to include alternative theories of liability in jury instructions.

***MGA Entertainment, Inc. v. Mattel, Inc.*,
Case No. B289709 (Cal. Ct. App. Oct. 29, 2019).**

In October 2019, the California Court of Appeal affirmed dismissal of a trade secret claim brought in connection with the longstanding dispute between toymakers MGA and Mattel over ownership of the Bratz line of dolls. MGA filed its claim against Mattel under the California Uniform Trade Secrets Act in 2010, more than three years after MGA had requested discovery and pled an affirmative defense against Mattel in prior federal litigation based on at least some of the same facts. In October 2019, the Court of Appeal affirmed the trial court's finding on summary judgment that MGA's trade secret claim was barred by CUTSA's three-year statute of limitations, holding that the "same suspicions that allowed MGA to request discovery and plead the unclean hands defense in federal court in 2007 were sufficient to trigger the statute of limitations." This decision emphasizes the importance of taking timely action to bring a trade secret action

once evidence of misappropriation is uncovered. The fact that MGA was engaged in prior litigation when it discovered evidence of misappropriation did not toll the statutory period or result in later trade secret claims relating back to the date the original action was filed. While MGA filed its CUTSA claim prior to the enactment of the Defend Trade Secrets Act, the ruling of the trial court and the California Court of Appeal would have been the same had the claim been brought under the DTSA. The California Supreme Court denied review.

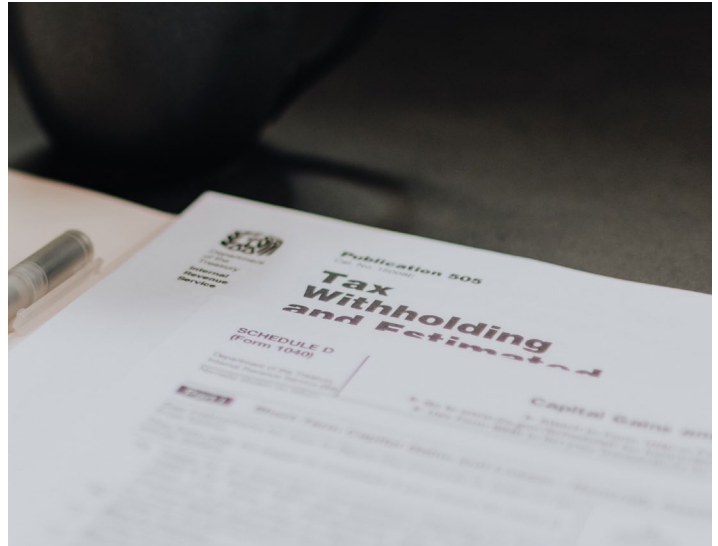
***NEXT Payment Solutions, Inc. v. CLEAResult Consulting, Inc.*,
No. 1:17-cv-8829 (N.D. Ill. May 31, 2020).**

In May 2020, the Northern District of Illinois granted a defense motion for summary judgment on a trade secret claim because, despite multiple attempts, the plaintiff failed to provide a "specific and concrete" identification of the trade secrets allegedly misappropriated. This dispute arose after plaintiff NEXT Payment Solutions licensed its proprietary scheduling software to defendant CLEAResult Consulting. After CLEAResult ended its use of NEXT's product, NEXT filed a DTSA claim alleging that CLEAResult had incorporated elements of NEXT's software into software CLEAResult acquired to replace NEXT. NEXT based this claim on an alleged overlap in functionality between the two scheduling software products, however—after multiple attempts—NEXT was unable to specifically identify the precise trade secrets that were allegedly misappropriated. The court held that the trade secret descriptions from NEXT, "which include[d] . . . general descriptions that are identifiable to an end-user," failed to narrowly describe the actual software it claimed was a trade secret. The court's summary dismissal of NEXT's claim underscores the importance of trade secret descriptions to a claim's survival.



Collaborative Imaging LLC and Dhruva Chopra v. Zotec Partners LLC et al., No. 05-19-01256-cv (Tex. App. June 12, 2020).

In June 2020, the Texas Court of Appeals rejected an attempt by trade secret defendants to invoke their First Amendment rights as a defense against a trade secret misappropriation claim. Defendant Dhruva Chopra left her job as a client service manager at medical billing company Zotec Partners to become CEO of defendant Collaborative Imaging LLC. After her departure, a key customer with close ties to Ms. Chopra and the co-founders of Collaborative Imaging terminated its relationship with Zotec, citing complaints about billing issues. Zotec and its subsidiary subsequently filed suit against Ms. Chopra and Collaborative alleging, among other claims, that the defendants misappropriated their trade secrets. In July 2019, Ms. Chopra and Collaborative Imaging filed a motion to dismiss plaintiffs' claims under the Texas Citizens Participation Act, a law similar to anti-SLAPP statutes in other states that is designed to efficiently dispose of baseless lawsuits brought to chill First Amendment rights. Ms. Chopra and Collaborative Imaging argued that the lawsuit against them was retaliation for their disclosure of plaintiffs' billing problems to a customer and that the lawsuit brought by Zotec infringed both their rights to free speech and association. The lower court and the Court of Appeals both rejected this attempt to invoke the statute's protection, holding that—like similar anti-SLAPP statutes—it only applies to communications that involve a “matter of public concern.” The Court of Appeals held that applying the law to “private communications related to an alleged conspiracy to misappropriate confidential business information” would “lead to an absurd result that would not further the purpose of the [statute] to curb strategic lawsuits against public participation.”



TLS Mgmt. & Marketing Servs., LLC v. Rodriguez-Toledo, No. 19-1104 (1st Cir. July 21, 2020).

TLS Management and Marketing Services, a tax planning and consulting firm, sued its former employee, Ricky Rodríguez-Toledo, for misappropriation under Puerto Rico's trade secret statute, as well as for breach of a nondisclosure agreement. The defendant conceded that, prior to his departure from TLS, he downloaded company information without authorization from the company and later referred to the information when dealing with clients at his new business. On cross-motions for summary judgment, the district court found in favor of TLS on both the trade secret and breach-of-contract claims. However, the First Circuit reversed the lower court, finding that TLS had failed to demonstrate the existence of actual trade secrets. The appellate court observed that the documents alleged to be trade secret included voluminous publicly available information and noted that TLS had not articulated what specific information in the documents rose to the level of a trade secret. The appellate court also held that TLS must do more to establish trade secret protections than show that strategy documents were not publicly known, but instead must show that the strategy was not readily ascertainable from public sources. The appellate court also rejected the NDA at issue in the case as overbroad and declined to narrow it. The First Circuit's reversal underscores the importance of establishing that the information at issue qualifies under the statutory definition of a trade secret. It also serves as a cautionary tale that companies cannot assume that a court will narrow an overbroad employment covenant to render it reasonable.



Certain Lithium Ion Batteries, ITC Inv.
No. 337-TA-1159 (Feb. 10, 2021).

On February 10, 2021, in a closely watched trade secrets dispute between LG Chem, Ltd. and SK Innovation Co., the US International Trade Commission announced that it has upheld an earlier decision of the Administrative Judge finding a violation of Section 337 of the Tariff Act of 1930. The Commission further announced that it has issued a limited exclusion order prohibiting the entry of certain lithium ion battery products into the United States as well as a cease and desist order prohibiting the marketing and sale of products already imported. Both the exclusion order and cease and desist order will be in effect for ten years. The Commission's Opinion stems from a complaint filed by LG Chem, Ltd. and other LG affiliates in April 2019, asking the ITC to investigate SK Innovation's alleged misappropriation of LG's trade secrets related to batteries used in its electric vehicles. In February 2020, the ALJ found SK in default based on his conclusion that SK had destroyed relevant documents. In his 2020 decision, ALJ Elliot found that trade secret misappropriation actions are "particularly sensitive to and prejudiced by acts of spoliation." He concluded that LG Chem's ability to pursue its case and his ability to oversee the investigation on the merits was "significantly prejudiced" and found SK Innovation in default as a sanction. The Commission's February 10, 2021 decision affirms that finding.

The Commission further indicated it included a carve-out to the exclusion order that allows SK to continue to import components for the domestic production of batteries for certain vehicles manufactured by Ford Motor Company and Volkswagen of America, Inc. It also permits SK to import materials used to repair or replace batteries for Kia vehicles that have already been sold to US consumers. The full reasoning is set forth in the Commission Opinion, which was not public at the time of publication. Under Commission rules, there is a 60-day presidential review period and SK can continue to import during that 60-day period if it posts a bond equal to 100% of the value of the covered products.



Epic System Corp. v. Tata Consultancy Services Ltd., et al.
No. 19-1613 (7th Cir. Aug. 20, 2020).

In August 2020, the Seventh Circuit upheld a trade secret award against Tata Consultancy Service, the consulting arm of the India-based Tata conglomerate, brought by Wisconsin-based medical software company Epic Systems. This case involved Tata's theft of trade secrets during their engagement as a consultant to a hospital system using Epic's software. After a 2016 trial, the jury found Tata must pay \$240 million in compensatory damages to Epic, and \$700 million in punitive damages. The district court subsequently struck \$100 million in compensatory damages and reduced the punitive damages award from \$700 million to \$280 million due to a statutory damages cap in Wisconsin. On appeal, the Seventh Circuit affirmed the jury's awarding of punitive damages based in part on Tata's "repeated attempts to deceive" Epic regarding the nature of its unauthorized access to Epic's trade secrets. The Seventh Circuit held that this evidence supported the jury's finding that Tata's conduct was "reprehensible," however, the court applied a balancing test in holding that the ratio of actual damages to punitive damages was excessive. Accordingly, the court remanded the case to the district court to adjust the punitive damages award to, at most, a 1:1 ratio of compensatory to punitive damages—\$140 million. This case—where Jenner & Block represented Epic Systems both at trial and on appeal—represents one of the largest-ever verdicts in a trade secret case. Notable lessons to be drawn from this case are the high cost of stealing trade secrets, and the severe consequences in the form of punitive damages where companies attempt to hide misconduct through nefarious means.



TRADE SECRET OWNERSHIP: POSSESSION REALLY IS NINE-TENTHS OF THE LAW

When we think of “ownership” of property, we typically think of ownership of tangible things, like real property. However, trade secrets do not fit neatly into such a framework. While there is no question that trade secrets are a type of property, the value and proprietary nature of a trade secret stems, by definition, from maintaining the secrecy of that knowledge.

Given this distinction, courts around the country, and most recently the Third Circuit, have held that possession of a trade secret (meaning possession of the secret that gives that trade secret value) is sufficient to maintain a claim for trade secret misappropriation—ownership of the trade secret itself is not required.

In *Advanced Fluid Systems, Inc. v. Huber*, the Third Circuit held that Advanced Fluid Systems had standing to assert trade secret misappropriation claims under Pennsylvania law because it had “adequately alleged lawful possession of the relevant trade secrets and that ownership, in the traditional sense, is not prerequisite to a trade secret misappropriation claim.” 958 F.3d 168, 175–76 (3d Cir. 2020). In that case, an employee of AFS used his insider knowledge of AFS’s systems to help a competitor win a lucrative bid and then later used that knowledge to win yet another lucrative bid, this time for his own newly created

company. When AFS sued the former employee and the competitor for trade secret misappropriation, the defendants argued that AFS did not have ownership rights to the trade secrets and, therefore, could not bring a misappropriation claim. The defendants’ argument was based on the fact that AFS’s trade secrets—which were developed pursuant to an agreement with the Virginia Commonwealth Space Flight Authority—gave that entity the “exclusive property” rights over “all materials generated during performance of the agreement,” which included the trade secrets at issue in the litigation. *Id.* at 174.

Neither the district court nor the Third Circuit were convinced. The Third Circuit reasoned:

[W]hile ownership of the sort traditionally associated with real or personal property is sufficient to maintain a trade secret misappropriation claim because the complete bundle of rights related to trade secrets includes the right to enjoy the value of the information’s secrecy, it is not a necessary condition. A *per se* ownership requirement for misappropriation claims is flawed since it takes account neither of the substantial interest that lawful possessors of the secrets have in the value of that secrecy, nor of the statutory language that creates the protection for trade

secrets while saying nothing of ownership as an element of a claim for misappropriation.

Id. at 177.

The Third Circuit relied heavily on a 2001 Fourth Circuit case, *DTM Research, L.L.C. v. AT&T Corp.*, 245 F.3d 327, 331 (4th Cir. 2001). In *DTM Research*, the defendant argued that the plaintiff could not bring a claim for trade secret misappropriation, because the plaintiff had itself allegedly misappropriated the trade secret from the United States government. The Fourth Circuit found this allegation irrelevant, concluding that possession, and not “ownership in the sense of fee simple absolute title,” is sufficient to sustain a cause of action under Maryland law. *Id.* at 331. The Fourth Circuit continued:

[T]he inherent nature of a trade secret limits the usefulness of an analogy to property in determining the elements of a trade secret misappropriation claim. The conceptual difficulty arises from any assumption that knowledge can be owned as property. The “proprietary aspect” of a trade secret flows, not from the knowledge itself, but from its secrecy. It is the secret aspect of the knowledge that provides value to the person having the knowledge . . . As a consequence, one “owns” a trade secret when one knows of it, as long as it remains a secret.

245 F.3d at 332.

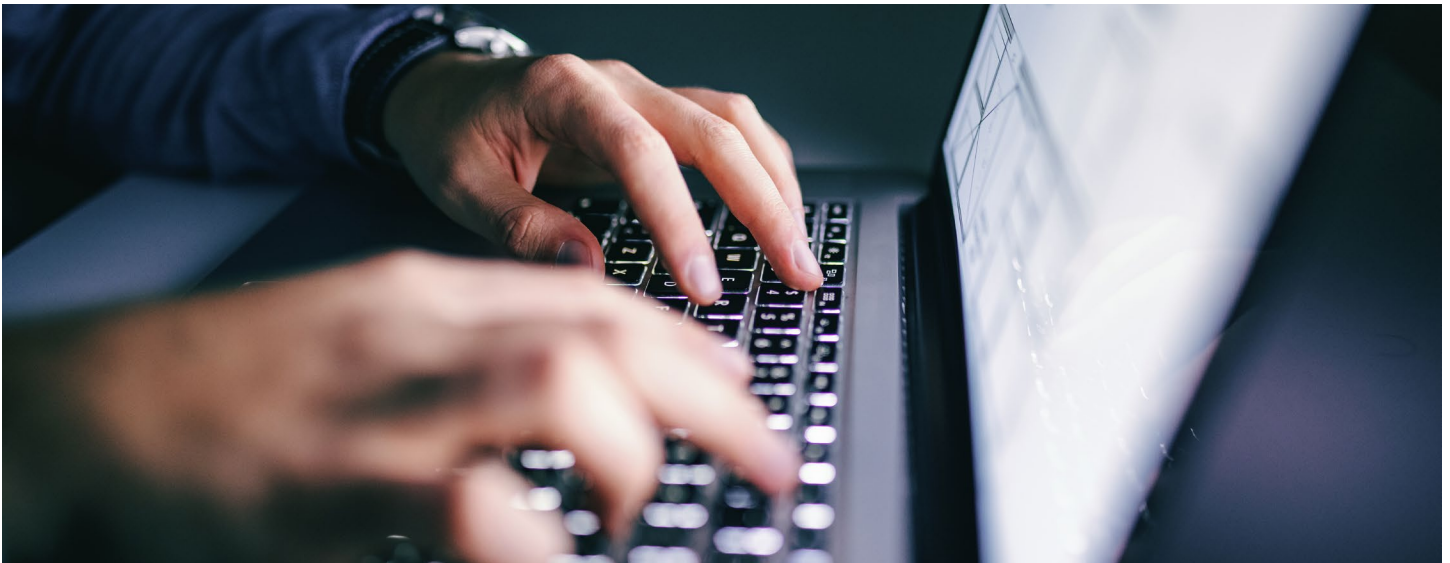
The Third Circuit in *Advanced Fluid Systems* found this reasoning “cogent” and consistent with Pennsylvania’s common-law view that trade secrets were “property” and misappropriation of trade secrets a violation of property rights, thereby applying it to the Pennsylvania UTSA. *Id.* at 177–78.

The Third Circuit became the latest court to follow the general trend developing across the country since *DTM Research*. Federal courts overwhelmingly have held that possession, even without ownership, could be sufficient for asserting a claim for trade secret misappropriation. See, e.g., *Gaedeke Holdings VII Ltd. v. Baker*, 683 F. App’x 677, 683 (10th Cir. 2017) (“Nothing in Oklahoma’s [Uniform Trade Secrets] Act defines ownership of the trade secret as an element of a claim for misappropriation of trade secrets.”); *NSEM, LLC v. Butler*, 2018 WL 3910961,

at *8–9 (S.D. Miss. Aug. 15, 2018) (“The Mississippi Uniform Trade Secrets Act does not appear to require that a plaintiff hold ownership of the trade secret . . . Rather, courts generally come to the same conclusion: a party has standing to bring a trade secrets claim if it has possession of the trade secret.”); *BladeRoom Group, Ltd. v. Facebook, Inc.*, 219 F. Supp. 3d 984, 990 (N.D. Cal. 2017) (same as applied to the California UTSA); *Williams-Sonoma Direct, Inc. v. Arhaus, LLC*, 304 F.R.D. 520, 527 (W.D. Tenn. Jan. 30, 2015) (same as applied to the Tennessee UTSA); *DaimlerChrysler Servs. v. Summit Nat’l*, No. 02-71871, 2006 WL 1420812, at *8 (E.D. Mich. May 22, 2006) (“[F]or purposes of trade secrets law [under the Michigan UTSA], the focus is appropriately on the knowledge, or possession, of the trade secret, rather than on mere ‘ownership’ in the traditional sense of the word.”).

The Advanced Fluid Systems decision, and the various other district court decisions in the last several years, significantly reduce the burden on trade secret holders of proving actual ownership of a particular trade secret in order to bring a claim for misappropriation. Possessors of trade secrets who, for one reason or another, are not the technical owner of those trade secrets, will still have to show that they acted in ways to ensure that information was kept a secret.





THE CURRENT STATE OF THE INEVITABLE DISCLOSURE DOCTRINE

The passage of the Defend Trade Secrets Act presented an opportunity to provide uniformity to parties litigating trade secret disputes. Before the DTSA, parties brought claims under their state's trade secret statutes modeled after the Uniform Trade Secrets Act, which, contrary to what the name might imply, were not always uniform. Four years in, the DTSA has not yet provided uniformity. One example arises in the context of the inevitable disclosure doctrine, where both state and federal courts' views on it range from acceptance to repudiation.

Claims under the inevitable disclosure doctrine typically involve allegations that a former employee necessarily cannot perform their job functions with a new employer without disclosing the former employer's confidential or trade secret information. The seminal case on this doctrine is from the Seventh Circuit in *PepsiCo, Inc. v. Redmond*, 54 F.3d 1262 (7th Cir. 1995), where the defendant (Redmond) was a general manager of a PepsiCo business unit who later went to work for Quaker, a PepsiCo competitor. PepsiCo sought to enjoin Redmond's employment with Quaker based on his access to PepsiCo's proprietary information, such as its strategic plans and pricing architecture guidelines, along with PepsiCo's assertion that Redmond at his new position would have substantial input as to Quaker's competing products' pricing, costs, margins, and distribution systems, among other things. The key argument was that

Redmond could not help but use PepsiCo's trade secrets in making decisions on Quaker's strategic course because he would be unable to compartmentalize or suppress the information he learned from PepsiCo. Ultimately, the Seventh Circuit agreed with PepsiCo and affirmed the lower court's order enjoining Redmond from assuming his role at Quaker for a period of approximately six months from the time he received his written offer and enjoining him forever from disclosing PepsiCo trade secrets and confidential information.

Originally, many thought that the DTSA's plain language suggested that inevitable disclosure would not be recognized under it because it states that injunctive relief is available only when "the order does not . . . prevent a person from entering into an employment relationship, and that conditions placed on such employment shall be based on evidence of threatened misappropriation and not merely on the information the person knows." 18 U.S.C. § 1836(b)(3)(A)(i).

That has not turned out to be the case in practice. Some federal courts, consistent with the law of the states in which they are situated, appear to have suggested, or at least implicitly held, that inevitable disclosure claims are available under the DTSA. This is most apparent in district courts in the Seventh Circuit, such as the Northern District of Illinois. For example, one court

recognized that while the Seventh Circuit has not explicitly allowed inevitable-disclosure claims under the DTSA, “[o]ther courts in th[e] district . . . have analyzed inevitable disclosure under both laws, which suggests that the doctrine is available in either context.” *Packaging Corp. of Am., Inc. v. Croner*, 419 F. Supp. 3d 1059, 1069 n.7 (N.D. Ill. 2020) (citing *Indus. Packaging Supplies, Inc. v. Channell*, 2018 WL 2560993 (N.D. Ill. Jun. 4, 2018); *Molon Motor & Coil Corp. v. Nidec Motor Corp.*, 2017 WL 1954531 (N.D. Ill. May 11, 2017)); see also *Gen. Elec. Co. v. Uptake Techs., Inc.*, 394 F. Supp. 3d 815, 834 (N.D. Ill. 2019) (finding that “a DTSA claim based on inevitable disclosure may survive a motion to dismiss”). Other federal courts have also left open the possibility of an inevitable disclosure claim under the DTSA. E.g., *Prime Therapeutics LLC v. Beatty*, 354 F. Supp. 3d 957, 967 (D. Minn. 2018) (“the Court finds it appropriate to analyze [federal DTSA and Minnesota Uniform Trade Secrets Act] claims together because . . . courts that have addressed the issue require the same showing of ‘inevitable disclosure’ of trade secrets under both statutes”) (citing *CPI Card Grp., Inc. v. Dwyer*, 294 F. Supp. 3d 791, 807–08 (D. Minn. 2018)); *Jazz Pharms., Inc. v. Synchrony Group LLC*, 343 F. Supp. 3d 434, 446 & n.52 (E.D. Pa. 2018) (“The Third Circuit has held that where an employee’s work for a new employer substantially overlaps with work for a former employer, based on the same role, industry, and geographic region, a district court may conclude that those

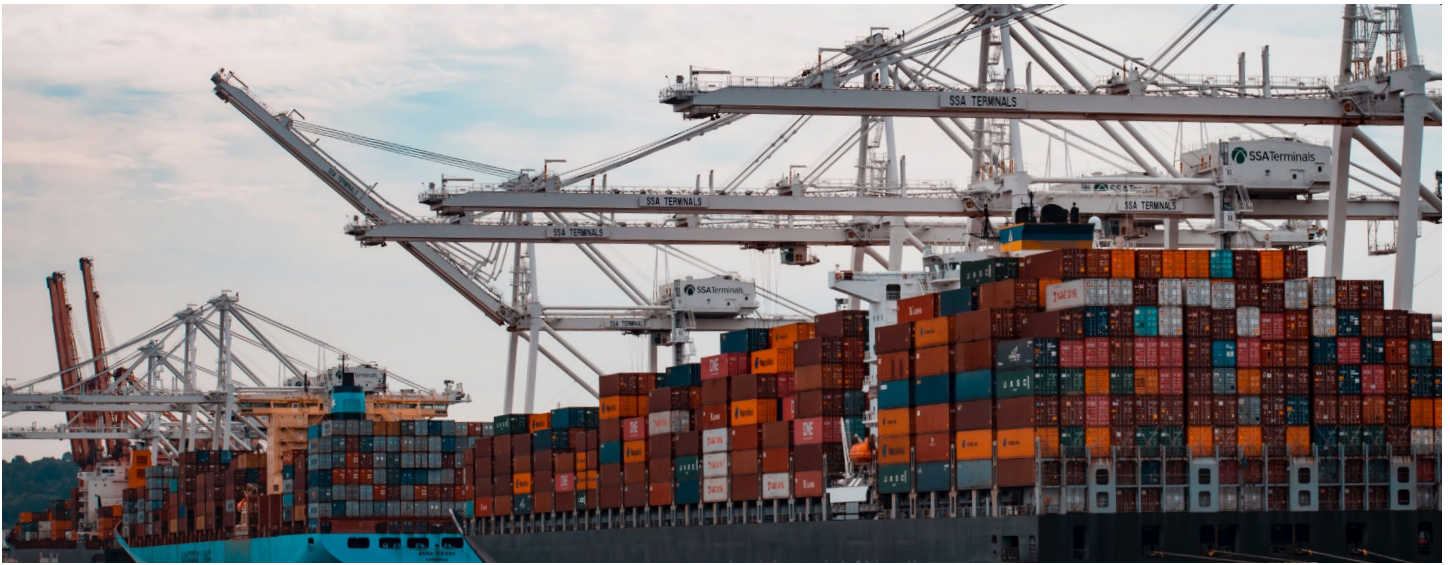
employees would likely use confidential information to the former employer’s detriment.”) (citing *Fres-co Sys. USA, Inc. v. Hawkins*, 690 F. App’x 72, 76 (3d Cir. 2017)); *Millenium Health, LLC v. Christopher Roberts*, No. 19-CV-2381, 2020 WL 2814440, at *18 (N.D. Ohio Mar. 4, 2020) (recognizing the potential for state and federal misappropriation claims based on the inevitable disclosure doctrine).

Elsewhere, federal courts have explicitly rejected or declined to adopt the doctrine where the state in which it sits has rejected the inevitable disclosure doctrine. California is the clearest example; consistent with its general prohibition on non-competition agreements and its policy goals favoring employment. *Power Integrations, Inc. v. De Lara*, 2020 WL 1467406, at *16 (S.D. Cal. Mar. 26, 2020) (“California rejects the inevitable disclosure doctrine.”).

Courts in other states have taken the same approach in UTSA cases, which are generally expected to be precedent for future DTSA cases. See, e.g., *Erlich Prot. Sys., Inc. v. Flint*, 2019 WL 5851938, at *3 (Mich. Ct. App. Nov. 7, 2019) (citing *CMI Int’l, Inc. v. Internet Int’l Corp.*, 251 Mich. App. 125 (2002)) (“Michigan has not yet adopted the more forgiving ‘inevitable disclosure’ doctrine, where a plaintiff may prove a claim of trade secret misappropriation by demonstrating that the defendant’s new employment will inevitably lead him to rely on the plaintiff’s trade secrets.”); *Premier Rides, Inc. v. Stepanian*, 2018 WL 1035771, at *10 (D. Md. Feb. 23, 2018) (“Maryland does not recognize the ‘inevitable disclosure’ doctrine that would support an injunction to prevent ‘threatened future disclosure or use of a trade secret.’”); *Cardoni v. Prosperity Bank*, 805 F.3d 573, 590 (5th Cir. 2015) (“no Texas case expressly adopt[s] the inevitable disclosure doctrine”) (quoting *Cardinal Health Staffing Network, Inc. v. Bowen*, 106 S.W.3d 230, 242 (Tex. App. 2003)).

As the above cases make clear, the availability of the inevitable disclosure doctrine varies widely depending on the applicable state law. The threshold question when the inevitable disclosure doctrine is in play will be the availability of the doctrine under precedent from the state law in the particular jurisdiction.





EXTRATERRITORIAL APPLICATION OF THE DEFEND TRADE SECRETS ACT

Since the passage of the Defend Trade Secrets Act, courts have grappled with the questions of whether and to what extent the DTSA can be applied to extraterritorial conduct. Trade secret misappropriation can often involve the actions of a foreign company that occur in part beyond the physical borders of the United States. To what extent can claims based on such conduct be brought in a civil action under the DTSA?

The US Supreme Court has held that statutes face a presumption against extraterritoriality founded on the “basic premise” that United States law “governs domestically but does not rule the world.” See *RJR Nabisco, Inc. v. European Community*, 136 S. Ct. 2090, 2100 (2016). This presumption derives from, among other things, a desire to avoid the international discord that could result from the application of United States law to foreign conduct. See *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 1659, 1664 (2013). This presumption may be overcome, however, based on a clear congressional intent that a law should apply extraterritorially. *RJR Nabisco*, 136 S. Ct. at 2100; see also *Steele et al. v. Bulova Watch Co., Inc.*, 344 U.S. 280 (1952) (applying Lanham Act claims to extraterritorial activity); *Hartford Fire Ins. Co. v. California*, 509 U.S. 764 (1993) (antitrust laws under the Sherman Act apply to extraterritorial conduct).

The DTSA codified a federal private right of action for the misappropriation of trade secrets. The statute also amended sections of the previously enacted Economic Espionage Act of 1996, which criminalized the theft of trade secrets under federal law. The DTSA does not explicitly state whether it is intended to apply to extraterritorial conduct. However, Section 1837 of the Economic Espionage Act explicitly applies to conduct outside of the United States:

This chapter also applies to conduct occurring outside the United States if (1) the offender is a natural person who is a citizen or permanent resident alien of the United States, or an organization organized under the laws of the United States or a State or political subdivision thereof; or (2) an act in furtherance of the offense was committed in the United States.

Section 1837, by its terms, applies to “[t]his chapter,” which includes the DTSA. Some have pointed out that the section also refers to an “offender” and “offense,” and argued that those terms are more typically associated with crimes, not private rights of action like the one created by the DTSA. Most courts have applied the terms of Section 1837 to the DTSA to find it applies extraterritorially. See, e.g., *vPersonalize Inc. v. Magnetize Consultants Ltd.*, 437 F. Supp. 3d 860, 878 (W.D. Wash. 2020); *Luminati Networks, Ltd. v. BIScience Inc.*, 2019 WL 2084426, at

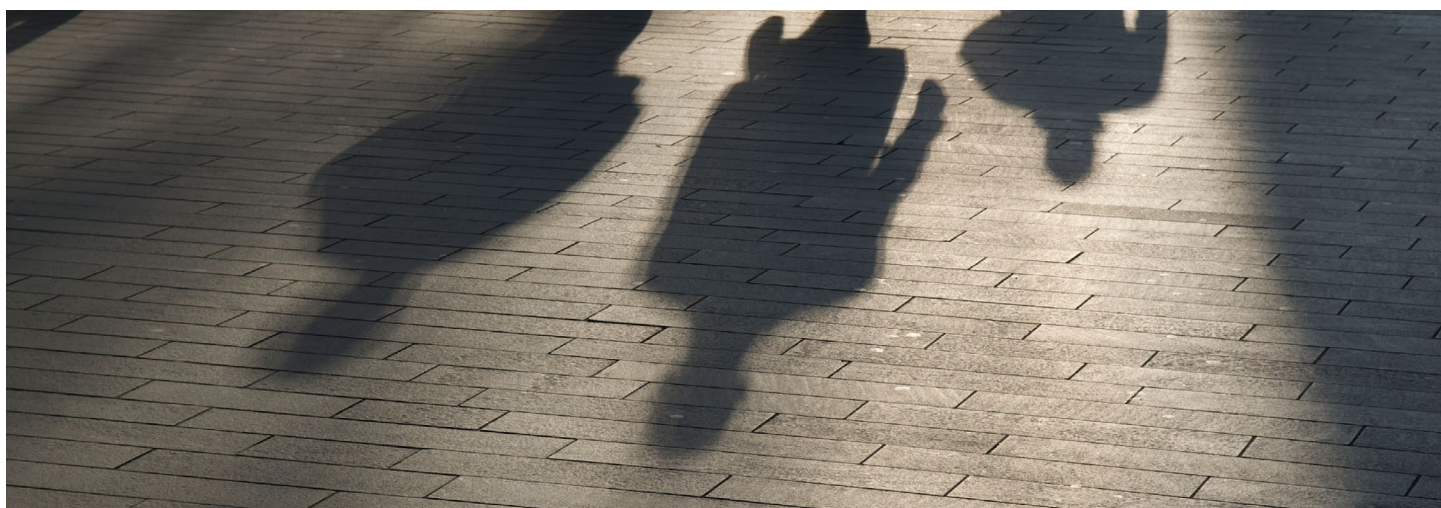
*9 (E.D. Tex. May 13, 2019) (“The DTSA ‘applies to conduct occurring outside the United States if . . . an act in furtherance of the offense was committed in the United States.’”); *Micron Tech., Inc. v. United Microelectronics Corp.*, 2019 WL 1959487, at *8 (N.D. Cal. May 2, 2019).

The most comprehensive analysis of this issue to date came from Judge Norgle of the Northern District of Illinois in *Motorola Solutions, Inc. v. Hytera Communications Corp.*, 436 F. Supp. 3d 1150 (N.D. Ill. 2020). Judge Norgle relied on Section 1837’s reference to “this chapter” along with the “numerous references to extraterritorial conduct” in the prefatory language of the DTSA to conclude that Section 1837 applied to the DTSA and overcame the presumption against extraterritorial application of laws. *Id.* at 1157–63. Although the *Motorola* decision and several other decisions have applied Section 1837 to the DTSA, no circuit courts of appeal have weighed in on the issue.

The question of what trade secret misappropriation conduct satisfies Section 1837 also remains. Courts must determine if either (1) the defendant is a resident of the United States; or (2) if “an act in furtherance of the [trade secret misappropriation] was committed in the United States.” See 18 U.S.C. § 1837. The latter requirement of an “act in furtherance” of the misappropriation has been at issue in several cases involving conduct that occurred both inside and outside of the United States. The DTSA does not define an “act in furtherance,” so some courts have looked to the federal common law, including federal conspiracy law, to determine its parameters. See, e.g.,

Motorola Solutions, 436 F. Supp. at 1165; *MedImpact Healthcare Sys., Inc. v. ICQIA, Inc.*, 2020 WL 5064253, at *15 (S.D. Cal. Aug. 27, 2020); *Luminati Networks*, 2019 WL 2084426, at *9.

Whether a plaintiff has adequately pled or established an “act in furtherance” of a misappropriation claim occurred in the United States is a fact-intensive inquiry. Courts have found this requirement to be satisfied where a plaintiff alleges that the defendant sold or marketed a product embodying the misappropriated trade secret in the United States. See, e.g., *Motorola Solutions*, 436 F. Supp. 3d at 1165 (holding that plaintiffs satisfied Section 1837 where defendants advertised, promoted, and marketed products embodying the allegedly stolen trade secrets at domestic trade shows); *Inventus Power, Inc. v. Shenzhen Ace Battery Co.*, 2020 WL 3960451, at *7 (N.D. Ill. July 13, 2020) (finding that plaintiffs showed an act in furtherance of misappropriation in the United States where they showed that defendant “marketed and sold in the United States the battery products for which the trade secrets were allegedly taken,” including at a battery technology trade show); *vPersonalize*, 437 F. Supp. 3d at 878 (holding that plaintiffs adequately alleged an act in furtherance of misappropriation occurred in the United States where they alleged that defendant acquired the trade secret through a US company and used that trade secret by offering its own products and services throughout the United States); *MACOM Tech. Solutions Inc. v. Litrinium, Inc.*, 2019 WL 4282906, at *5 (C.D. Cal. June 3, 2019) (holding that plaintiffs satisfied Section 1837 where they alleged that the trade secrets were used by defendant in its products in the stream of interstate commerce

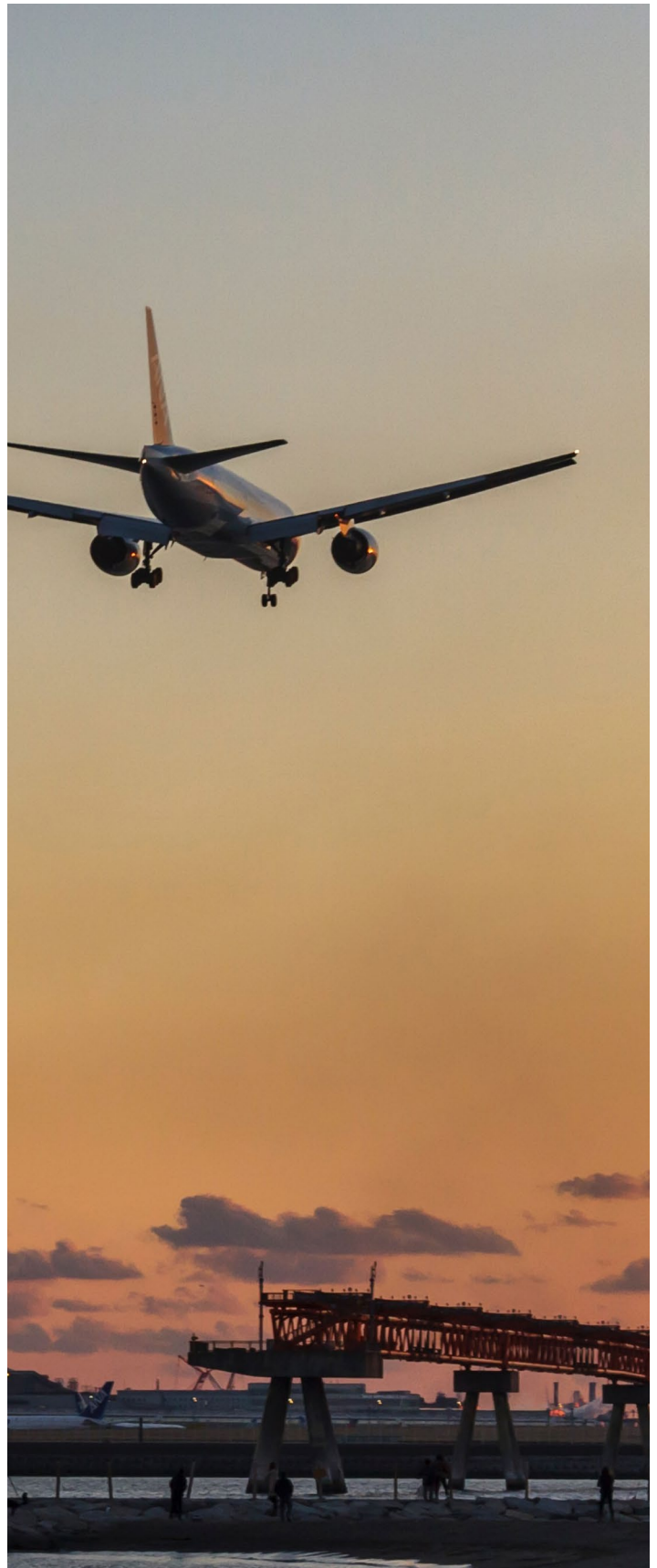


and that the misappropriation was coordinated in California). Indeed, in *Luminati Networks*, the plaintiff's mere allegation that by "using . . . [plaintiff's] trade secrets, [defendant] has committed acts in the State of Texas and the United States" was found sufficient to satisfy Section 1837. 2019 WL 2084426, at *11.

Similarly, courts have found Section 1837 satisfied where elements of the acquisition of the trade secret occurred in the United States. See *MedImpact Healthcare*, 2020 WL 5064253, at *15 (holding that plaintiff adequately alleged act in furtherance of misappropriation claim occurred in the United States where plaintiff alleged, among other things, that defendant (1) communicated with plaintiff's US employees to learn about its trade secrets; (2) accessed plaintiff's server hosted in San Diego; and (3) communicated with plaintiff even after the termination of their joint venture without disclosing the real reasons for the termination).

But not all allegations of a nexus to the United States suffice to satisfy Section 1837. For example, in *ProV Int'l Inc. v. Lucca*, the court held that the plaintiffs failed to adequately allege an act in furtherance of trade secret manipulation in the United States where the only alleged connection to the United States was that the defendant traveled to a Las Vegas trade show to attend an event and tender his resignation, which were unconnected to the alleged misappropriation of trade secrets. 2019 WL 5578880, at *3 (M.D. Fla. Oct. 29, 2019). Likewise, allegations of damages occurring in the United States appear to be inadequate. See *Luminati Networks*, 2019 WL 2084426, at *11 ("[D]amages that occurred in the United States, standing alone, would not be acts 'in furtherance of' misappropriation but rather would be the consequence of a 'fully completed operation.'").

As DTSA claims continue to be brought against foreign entities, we expect that issues regarding the extraterritorial application of the DTSA will continue to arise, particularly in the absence of clear guidance at the Supreme Court or circuit court level.





THE SUPREME COURT ADDRESSES THE COMPUTER FRAUD AND ABUSE ACT

The Supreme Court recently reviewed the meaning of certain language under the Computer Fraud and Abuse Act (CFAA) in *Van Buren v. United States*, No. 19-783. The provision under which Van Buren was convicted, 18 U.S.C. 1030(a)(2)(C), provides that a person engages in criminal activity under the CFAA if he or she “intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains . . . information from any protected computer.” The term “exceeds authorized access” is defined as “to access a computer with authorization and to use such access to obtain or alter information in the computer that the accessor is not entitled so to obtain or alter.” 18 U.S.C. 1030(e)(6). At issue in the case is whether a person who is authorized to access information on a computer for certain purposes violates Section 1030(a)(2) if he or she accesses the same information for an improper purpose.

The relevant underlying facts in *Van Buren* are as follows. Van Buren was a sergeant with the Cumming, Georgia Police Department. In that capacity, he was given access credentials for a data-communications network maintained by the Georgia Crime Information Center (GCIC). To receive those credentials, he was required to complete training, during which he learned that law-enforcement officers were authorized to run searches on the system only for law-enforcement purposes.

In the course of his job, he met a man named Albo, who had frequent interactions with law enforcement. At one point, Van Buren asked Albo for a loan. Unbeknownst to Van Buren, Albo recorded the conversation and provided that recording to law enforcement.

The FBI became involved and planned a sting operation in which Albo would offer Van Buren cash in exchange for Van Buren telling Albo whether a woman Albo supposedly met at a strip club was an undercover police officer. Ultimately, Albo offered Van Buren the cash, and Van Buren ran the requested search on the GCIC system in exchange. Van Buren admitted to accepting the cash for running the search and, relevant here, was charged with and convicted of exceeding authorized access to a protected computer to obtain information for private financial gain, in violation of 18 U.S.C. 1030(a)(2)(C) and (c)(2)(B)(i). The Eleventh Circuit affirmed. *United States v. Van Buren*, 940 F.3d 1192 (11th Cir. 2019).

Van Buren made four general arguments in support of his interpretation in his brief before the Supreme Court. First, he argued that the plain meaning of the phrase “not entitled so to obtain or alter,” 18 U.S.C. 1030(e)(6), does not include misuse or misappropriation of information one is authorized to access;

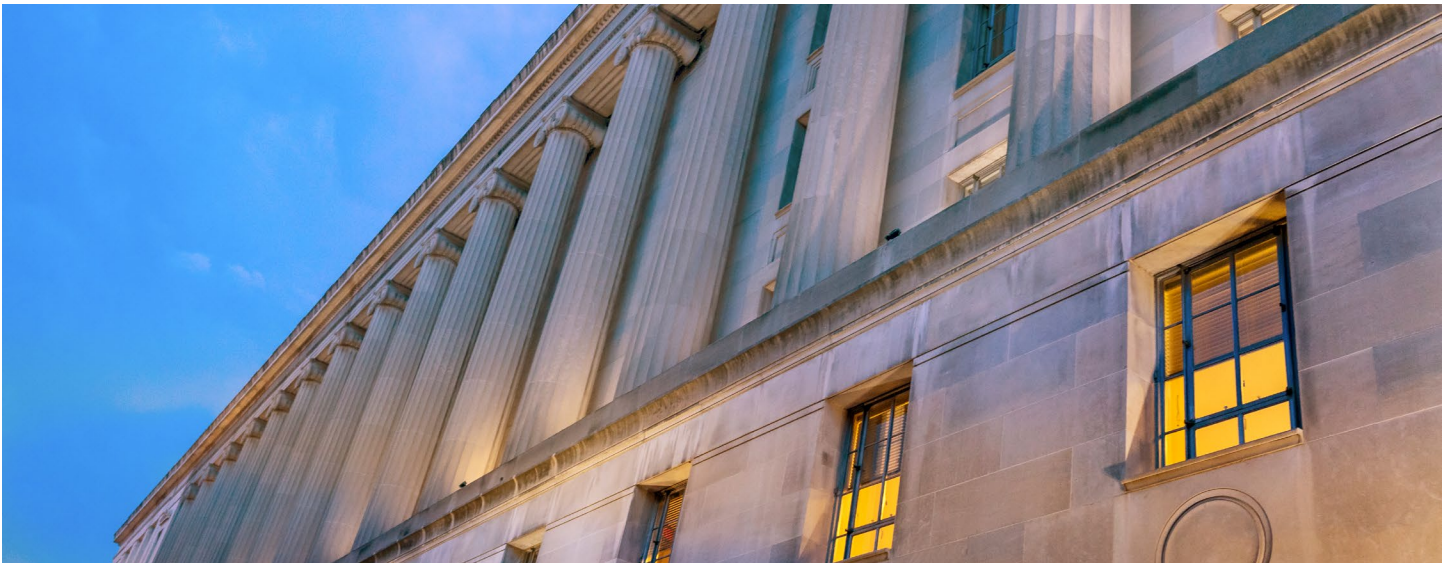


Congress would have included some reference to “unauthorized purposes” in the statute if that is what it meant for the statute to cover. Second, he asserted that the legislative history shows that the CFAA was aimed at addressing “hacking”—i.e., breaking into computers without permission—and, thus, does not cover situations in which a user has authorization to access the information for some purposes; relatedly, he asserted that state common law and other statutes already address the conduct at issue here. Third, he contended that interpretations like that of the Eleventh Circuit would transform everyday activities into federal crimes, as people are often violating websites’ terms of use or their employers’ internet policies. Finally, he argued that accepting such interpretations would raise constitutional questions under the void-for-vagueness doctrine and the First Amendment and violate the rule of lenity.

In response, the United States made its own plain-language argument, focusing on the word “so” and asserting that “entitled so to obtain” means being granted the right to do something in a particular manner or circumstance. It also challenged Van Buren’s legislative-history argument, contending that the history actually suggests that Congress always intended to cover more than just hacking and, in fact, expanded the statute’s scope over time to cover more insider conduct. The United States also disputed Van Buren’s hypotheticals, arguing that those hypotheticals unfairly assume that courts will necessarily adopt the broadest possible readings of other terms in the statute and citing the fact that there have been no successful cases involving the type of conduct at issue in the hypotheticals. Finally, the United States challenged Van Buren’s constitutional avoidance arguments by contending that there is no support for this statute, which applies to conduct, being a substantially overbroad restriction of speech or facially vague, and argued that the rule of lenity does not apply because there is no grievous ambiguity in the text of the statute.

Circuits are split on the question at issue in this case. On the one hand, circuits like the Eleventh in deciding this case have held that an individual “exceeds authorized access” in violation of the CFAA if he or she accesses information on a computer—that he or she is for some purposes authorized to access—for an unauthorized purpose. See also *United States v. Rodriguez*, 628 F.3d 1258, 1263 (11th Cir. 2010); *United States v. John*, 597 F.3d 263, 272 (5th Cir. 2010); *Int’l Airport Ctrs., L.L.C. v. Citrin*, 440 F.3d 418, 420-21 (7th Cir. 2006); *EF Cultural Travel BV v. Explorica, Inc.*, 274 F.3d 577, 582-84 (1st Cir. 2001). More recently, other circuits have found that interpretation too broad given the statutory language and the potential implications of that interpretation. See *United States v. Valle*, 807 F.3d 508, 528 (2d Cir. 2015); *WEC Carolina Energy Sols. LLC v. Miller*, 687 F.3d 199, 207 (4th Cir. 2012); *United States v. Nosal*, 676 F.3d 854, 856-63 (9th Cir. 2012) (en banc).

The Supreme Court heard oral argument on November 30, 2020, and it is expected to issue its decision later this year.



TRADE SECRET CRIMINAL LAW UPDATE

The number of criminal trade secret cases has continued to rise. While the DOJ has focused its efforts in recent years on prosecutions involving Chinese nationals and companies, it still actively investigates and prosecutes claims against US and other foreign nationals and entities as well.

DOJ's China Initiative Heats Up

Many of the trade secret prosecutions brought by federal authorities in recent years have involved individuals or entities with ties to China. In November 2018, then-Attorney General Jeff Sessions announced the creation of a new DOJ effort known as the "China Initiative." The purpose of the China Initiative is for DOJ to "identify priority Chinese trade theft cases, ensure that we have enough resources dedicated to them, and make sure that we bring them to an appropriate conclusion quickly and effectively." According to DOJ, "[a]bout 80 percent of all economic espionage prosecutions brought by [DOJ] allege conduct that would benefit the Chinese state, and there is at least some nexus to China in around 60 percent of all trade secret theft cases." While the China Initiative also includes within its ambit non-trade secret cases, such as an increase in the Foreign Agent Registration Act Unit's work to counter covert lobbying efforts on behalf of foreign entities, trade secret theft is a key focus of the Initiative.

In conjunction with the announcement of the Initiative, DOJ also unveiled an indictment from the Northern District of California alleging economic espionage on the part of Chinese state-owned Fujian Jinhua Integrated Circuit Co., Taiwanese United Microelectronics Corp., and three Taiwanese individuals for an alleged scheme to steal trade secrets from Micron Technology Inc., an Idaho-based semi-conductor company, related to dynamic random access memory technology. One of the defendants had served as president of a company acquired by Micron in 2013 and when he left the company in 2015, he went to work for United Microelectronics, from where he is alleged to have orchestrated the theft of trade secrets from Micron worth up to \$8.75 billion. United Microelectronics then purportedly partnered with Fujian. *U.S. v. United Microelectronics Corporation, Inc., et al.*, No 18-CR-465 (N.D. Cal.). In an effort to block prospective harm and not just punish past criminal conduct, the Commerce Department added Fujian to the Entity List to prevent it from buying goods and services in the United States, and DOJ filed a parallel civil action seeking an injunction that would prevent both Fujian and United Microelectronics from transferring the stolen technology, or importing products based on it to the United States. The case has had global implications, with a Taiwanese court fining United Microelectronics \$3.4 million in June 2020 after finding three engineers guilty of trade secret theft. The parties have

also been embroiled in civil litigation, both in the United States and China, over the alleged theft.

In 2020, DOJ's laser focus on China-related trade secret cases grew more intense. In February 2020, in one of the most high-profile corporate prosecutions in recent years, DOJ announced a superseding indictment against Huawei Technologies Co., Ltd. and several affiliates alleging, among other charges, intellectual property and racketeering charges. *U.S. v. Huawei Technologies Co., Ltd., et al.*, No. 18-cr-457 (E.D.N.Y.). But while the political and media focus has often been on Huawei, DOJ has announced a number of criminal prosecutions against Chinese nationals, often with ties to US research institutions:

- In February 2020, Hongjin Tan was sentenced to 24 months in prison for stealing proprietary information worth more than \$1 billion from his employer, a US petroleum company, after pleading guilty to intentionally copying and downloading research and development materials without authorization regarding his work with a group at the company charged with developing next-generation battery technologies for stationary energy storage. Tan was also ordered to pay \$150,000 in restitution. *U.S. v. Hongjin Tan*, 4:19-cr-00009-GKF (N.D. Okla.).
- Also in February 2020, Shan Shi, the head of a Houston-based subsidiary of a Chinese company, was sentenced to 16 months in prison and ordered to forfeit over \$330,000 after a jury found Shi guilty of conspiring to steal trade secrets by hiring ex-employees of a Houston-based company that manufactured syntactic foam, a buoyancy material that aids in offshore oil and gas drilling. The employees then transferred proprietary information to Shi and his company, who used the information to create a syntactic foam manufacturing process in China. *U.S. v. Shan Shi, et al.*, 1:17-cr-00110-CRC (D.D.C.).
- In June 2020, Hao Zhang, a professor at China's Tianjin University and former employee of Skyworks Solutions Inc. in Massachusetts, was found guilty of economic espionage, theft of trade secrets, and conspiracy charges after a bench trial over allegations that he stole trade secrets related to wireless device performance from Skyworks and Avago Technologies to help the university and his private company steal trade secrets related to wireless device performance for cellphone radio frequency filters. Zhang was sentenced in September 2020 to 18 months in prison and ordered to pay a \$476,835 fine. *U.S. v. Hao Zhang*, No. 5:15-cr-00106 (N.D. Cal.).
- Chinese national Li Chen pled guilty in July 2020 in federal court in Ohio to conspiring to steal trade secrets and commit wire fraud from Nationwide Children's Hospital, where she worked as a researcher. According to her plea, Chen conspired to steal at least five trade secrets connected to exosome research and started a company in China to sell exosome "isolation kits," receiving benefits from the Chinese government in the process. *U.S. v. Chen*, No. 2:19-cr-00163 (S.D. Ohio).
- Federal prosecutors unveiled an 11-count indictment in July 2020 against two Chinese nationals charged with a global hacking operation targeting hundreds of companies and governments over more than a decade, including the networks of US companies developing vaccines and treatments for COVID-19. The defendants are alleged to have stolen terabytes of data from technology companies around the world. *U.S. v. Li Xiaoyu and Dong Jiazhi*, No. 4:20-CR-6019-SMJ (E.D. Wash.).
- In August 2020, DOJ arrested and charged Haizhou Hu, a Chinese national conducting research at the University of Virginia's Department of Mechanical and Aerospace Engineering, with accessing a computer without authorization to obtain information from a protected computer and theft of trade secrets after he was stopped for routine screening by US Customs and Border Protection at Chicago's O'Hare Airport and found to be in possession of bio-inspired research simulation software he was not authorized to have. *U.S. v. Haizhou Hu*, No. 3:20-mj-00036 (W.D. Va.). However, in a setback for DOJ, prosecutors abruptly moved to drop the charges after further investigation of the university's computer systems revealed that Hu was actually authorized to access some of the materials at issue. Notably, the case appears to have fallen apart due to the question of whether the information was sufficiently guarded to ensure no authorized disclosure, and the university noted that it was reviewing its data access and permission standards as a result.
- In October 2020, a grand jury returned an indictment against a Chinese energy company, its US affiliate, and a Chinese national alleging that they had conspired to induce a US citizen (who pled guilty to other charges) to transmit trade secrets related to oil and gas exploration to China. *United States v. Gao*, (S.D. Tex.).

It also seems likely that more cases are yet to come: FBI Director Christopher Wray, speaking at a China Initiative conference in February 2020, noted that about 1,000 investigations related to the Initiative were open "in every industry and sector." Of particular note, in July 2020, the US Department of State

ordered the closure of the Chinese consulate in Houston, Texas, a measure that, according to a State Department briefing, was taken to combat espionage and influence activities purportedly undertaken by consulate officials, including supporting and encouraging intellectual property theft. And in November 2020, the Department of Justice issued a press release noting that about “80 percent of all economic espionage prosecutions” it brought “allege conduct that would benefit the Chinese state, and there is at least some nexus to China in around 60 percent of all trade secret theft cases.”

It is not clear what the fate of the China Initiative will be under the new administration, or whether DOJ will continue to look east in its efforts to combat trade secret theft, but it is safe to say that non-US nationals and companies could continue to find themselves in DOJ’s crosshairs as trade secret theft prosecutions and national security concerns continue to intersect.

Other Trade Secret Theft Prosecutions

DOJ’s recent focus on China, however, has not meant letting up on trade secret prosecutions of domestic and other foreign actors, with a number of other criminal prosecutions being unveiled or resolved in 2019 and 2020.

In April 2019, a former DuPont employee was sentenced to 42 months’ imprisonment and three years’ supervised release. A DuPont competitor in the ethanol business recruited and hired the defendant. After the defendant accepted a position with the competitor, the competitor’s COO informed him that he would be servicing two ethanol plant customers, both of which happened to be former DuPont clients. The COO asked the defendant to search for DuPont data for those plants. The defendant remained at DuPont for two weeks after tendering his resignation letter. During that time, he downloaded and sent the competitor multiple files that contained DuPont trade secrets. Before the defendant returned his company phone to DuPont, the competitor’s COO instructed him to delete all of their text messages. In addition to the files that the competitor sent to the competitor’s COO, the FBI seized from the defendant’s home electronic storage devices and computers that contained DuPont trade secrets. *U.S. v. Isler*, No. 18-CR-2032-LRR (N.D. Iowa).

In September 2019, a grand jury indicted Alexander Korshunov and Mauricio Bianchi for conspiracy to steal trade secrets and attempted theft of trade secrets. Bianchi worked for Avio Aero, a GE Aviation company headquartered in Italy, after which he worked for another Italian company, Aernova. Korshunov was employed by United Engine Corporation, a Russian state-owned company, which included a subsidiary, Aviadvigatel. Aernova and Aviadvigatel had a business relationship. The indictment alleges that Bianchi recruited Avio Aero employees, on Korshunov’s behalf, to offer consulting services on airplane accessory gearboxes. The employees that Bianchi recruited used Avio Aero trade secrets to generate a technical report that offered suggestions for improvements to United Engine Corporation’s own accessory gearboxes and used these trade secrets to develop other United Engine Corporation projects. *United States v. Korshunov*, Case No. 1:19-cr-00113-TSB (S.D. Ohio).

In October 2019, a district court judge denied a defendant’s motion for a new trial after he was convicted of attempted theft of trade secrets, among other things. The defendant argued that Section 1832 of the Economic Espionage Act only allows for attempt charges when the defendant tries and fails to steal actual trade secrets. He further argued that the court erred by permitting the Government to pursue attempt charges where the





In February 2020, a defendant was sentenced to 70 months in prison for conspiracy to steal trade secrets. He admitted that he and his co-conspirators agreed to steal trade secrets from aircraft companies to help a competitor develop anti-ice aircraft technology. *United States v. German*, Case No. CR419-069 (N.D. Ga.).

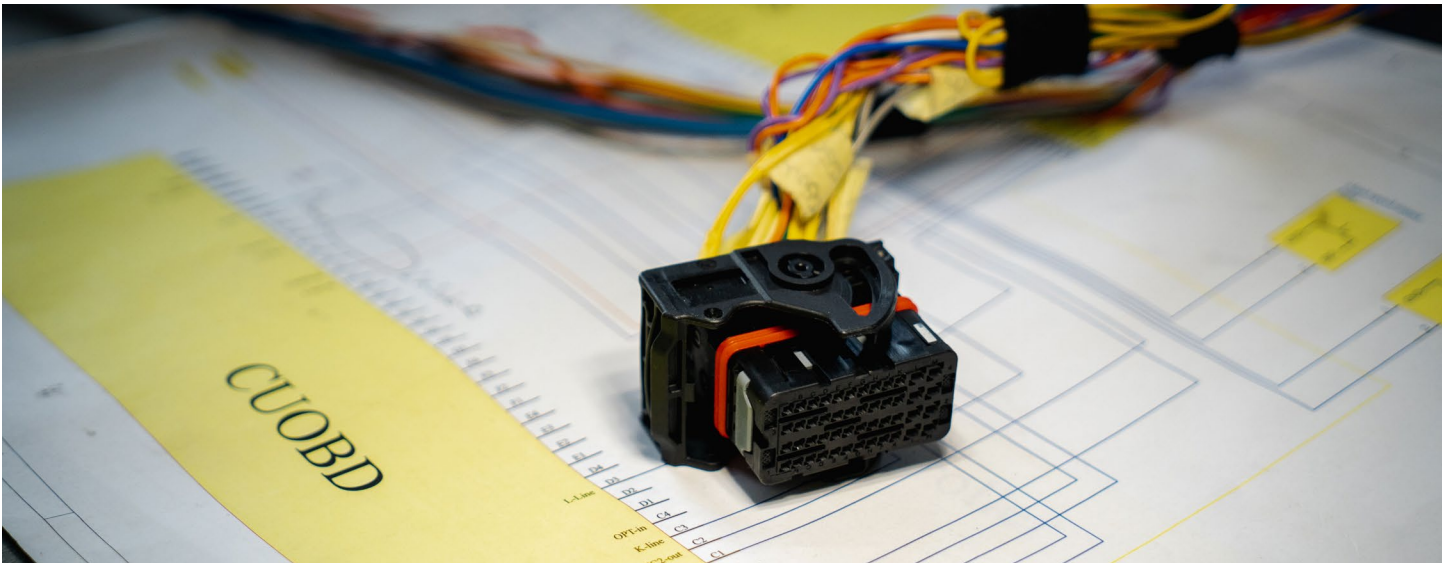
In June 2020, a defendant was sentenced to 18 months' imprisonment for theft of trade secrets from StrikeLines. StrikeLines used sonar equipment to identify fishing reefs in the Gulf of Mexico and then sold the coordinates on its website. The defendant, a software engineer, stole sonar coordinates from StrikeLines and decrypted information from its website. He then used the information he stole to try and extort the StrikeLines owners for additional information. This case is one that reflects the intersection between cyber security and the protection of trade secrets and other valued information. *United States v. Smith*, Case No. 3:19cr32-MCR (N.D. Fla.).

And in January 2021, the former director of a New Jersey pharmaceutical company was arrested for allegedly stealing and illegally transmitting trade secrets from his former employer by surreptitiously using USB devices and emailing company documents to himself before departing for another enterprise. *United States v. Quadri*, Case No. 20-15528 (ESK) (D.N.J.).

* * * *

As these cases demonstrate, criminal prosecution of trade secret misappropriation can raise serious issues for corporations and individuals. In addition to the potential for large civil damages awards, trade secret theft also can result in criminal prosecution and penalties, including fines and even prison sentences. Because criminal prosecutions and investigations require different strategic considerations and can significantly raise the stakes in a case, it is important to consider the potential criminal implications of any trade secret misappropriation matter.

information he attempted to steal was not, in fact, a trade secret. The court held that the attempt charges did not require proof that actual trade secrets existed, rather, they only required that the defendant believed the information they were taking was a trade secret. The court further explained that an attempt charge could be brought against those who successfully steal information that they believe to contain trade secrets but in fact do not. *United States v. O'Rourke*, 417 F.Supp.3d 996 (N.D. Ill. 2019). This case demonstrates that 1) the burden for proving that a defendant believed the information they were taking was a trade secret is high, and 2) misappropriating any information from an employer, even if not a trade secret, risks severe consequences.



TENSION BETWEEN TRADE SECRET PROTECTION AND PATENT DISCLOSURE

Aspects of trade secret and patent law sometimes collide despite the differing nature of protection for each. Trade secrets are, by definition, kept private, while patents require full public disclosure of the invention; the intersection occurs when the trade secret may have been publicly disclosed in a patent or patent application. That was the issue in *Global Protein Products, Inc. v. Le*, 42 Cal. App. 5th 352 (2019). In that case, Le sought to dissolve a stipulated permanent injunction enjoining Le from using a trade secret from his former employer Global Protein Products (GPP) concerning a proprietary formula and process used to prolong the shelf life of field-cored iceberg lettuce. GPP treated that undisclosed proprietary formula as a trade secret, which it later identified as sodium benzoate (i.e., benzoic acid). Le argued that because recently discovered evidence demonstrated that the proprietary formula had been publicly disclosed in a patent and patent application, GPP no longer had a valid trade secret. The trial court denied the motion, and Le appealed.

At the appellate court, Le argued that GPP's prior disclosure of the organic acid vitiated GPP's commercial advantage and, therefore, destroyed the trade secret. Specifically, Le relied on a patent issued to GPP, the '880 Patent, and a patent application, the '147 Application, both of which were filed or issued before the parties agreed to the permanent injunction. The '880 Patent claims a food-preserving formula and includes instructions on

preparing and using the formula with seafood. The claimed formula includes an "organic food grade acid or a salt thereof." The '147 Application states that its invention can be used "to enhance the germination, emergence, root mass development, disease resistance, photosynthetic rate, plant growth, and crop yield of a variety of agricultural commodities including but not limited to ... lettuce" The '147 Application also noted that benzoic acid could be added to help stabilize the formula.

Le also pointed to several articles discussing the use of sodium benzoate to preserve lettuce, and the fact that sodium benzoate was well-known and extensively used in the food preservation industry, to argue that GPP had no commercial advantage in its trade secret because competitors and technical persons could readily ascertain or reverse-engineer all the required components of the trade secret. GPP challenged Le's analysis, arguing that its trade secret also included a process, method, or technique, and not merely the compound itself.

While the appellate court agreed with the fundamental doctrine that publication of a trade secret destroys the secrecy, it found that the disclosure of sodium benzoate as the unidentified acid does not reveal the *process* by which GPP's trade secret product is applied and used on lettuce. The court apparently gave great weight to the description of the trade secret in the

stipulated injunctions, which was “a proprietary formula *and* process for treating field-cored iceberg lettuce to increase shelf life of the lettuce.”

Although the ‘880 Patent discusses various ways to prepare the formula for use on seafood, the court found that Le did not identify which preparation discloses GPP’s trade secret. In addition, the court found that although the ‘147 Application makes “a passing reference to the preservation of lettuce using ... benzoic acid,” Le did not cite to a particular portion of the ‘147 Application that expressly discusses extending the shelf life of cut lettuce. Further, the court notes that nothing in the record demonstrates that the “specific process is public information.” Therefore, the court held that the trade secret remained valid.

This case teaches a valuable lesson to practitioners challenging a trade secret based on public disclosure. Even though the compound at issue in this case was publicly disclosed and well-known, the court was not convinced that the “process” aspect of the trade secret was public. The problem for Le was that the trade secret process did not appear to be entirely defined, making Le’s challenge difficult. Defendants should first ensure that the plaintiff is precise about the boundaries and limitations of the alleged trade secret. For example, Le likely would have been aided by a precise disclosure of the trade secret process so he could challenge whether that process also was publicly disclosed. Defendants also must be specific and particular when identifying those features in a patent or other public disclosure. Focusing on one part of the trade secret, even if it appears to be the most significant aspect, may not be sufficient to defeat protection of the trade secret as a whole.





THE STATE OF PREEMPTION UNDER THE CALIFORNIA UNIFORM TRADE SECRETS ACT

Companies seeking relief for a former employee's or competitor's misappropriation of trade secrets must always consider the preemptive effect of the California Uniform Trade Secrets Act (CUTSA) on potential common-law claims, like breach of contract or conversion, before commencing litigation. CUTSA provides the exclusive civil remedies for claims based on misappropriation of trade secrets in California, which means that courts will dismiss common law claims that, "stripped of facts supporting trade secret misappropriation," do not independently support a separate cause of action. *Waymo LLC v. Uber Techs., Inc.*, 256 F. Supp. 3d 1059, 1062 (N.D. Cal. 2017). The "preemption provision" of the CUTSA—called "vexingly oblique" by the California Court of Appeal—does not list the specific common law claims it supersedes. See *Silvaco Data Sys. v. Intel Corp.*, 184 Cal. App. 4th 210, 232 (2010), disapproved of on other grounds, *Kwikset Corp. v. Super. Ct.*, 51 Cal. 4th 310 (2011). Instead, preemption "[d]epend[s] on the particular facts pleaded," and courts are required to assess preemption on a case-by-case basis, making it difficult for potential litigants to determine whether and how to bring common law claims based on trade secret misappropriation. See *K.C. Multimedia, Inc. v. Bank of Am. Tech. & Ops., Inc.*, 171 Cal. App. 4th 939, 958–59 (2009).

Three recent cases from federal district courts in California—*Navigation Holdings*, *Albert's Organics*, and *Snapkeys*—shed light on how courts are assessing the preemptive effect of the CUTSA.

Navigation Holdings, LLC v. Molavi, 445 F. Supp. 3d 69 (N.D. Cal. 2020), is instructive for companies that seek to bring tortious interference claims in connection with a claim for misappropriation of trade secrets. Here, one of the plaintiffs, Primrose Alloys, Inc. hired Alex Molavi to establish Navigation Holdings, LLC, d/b/a Xi Dong, a new subsidiary of Primrose. Eventually, Molavi came to serve as president of Xi Dong, and in 2014, he negotiated a contract between Primrose and a Vietnamese corporation called Tung Shin International Co., under which Tung Shin agreed to supply its products exclusively to Xi Dong in the United States. By March 2018, Molavi had terminated his employment with Xi Dong and had begun working for Tung Shin. According to the plaintiffs, Molavi then "secure[d] business based upon confidential information and trade secrets" he had taken from the plaintiffs. The plaintiffs filed an action for misappropriation of trade secrets under the Defend Trade Secrets Act and CUTSA, and brought various common law claims, including for intentional interference with economic advantage.

In their claims for tortious interference, the plaintiffs alleged that they had contracted with Tung Shin back in 2014 to ensure that Tung Shin would sell its products in the United States exclusively to the plaintiffs, and that the defendants (other than Tung Shin) had “leveraged access to Xi Dong’s exclusive pricing structure” to induce Tung Shin to breach this exclusivity agreement. The defendants moved to dismiss the tortious interference claims on the basis that the claims were superseded by the CUTSA. The court granted the motion, finding that the tortious interference claims were “intertwined with the trade secret misappropriation claims.” For example, the court reasoned, both the misappropriation claim and the tortious interference claims alleged that the defendants used confidential pricing information to “anticipate and undercut” the plaintiffs’ prices.

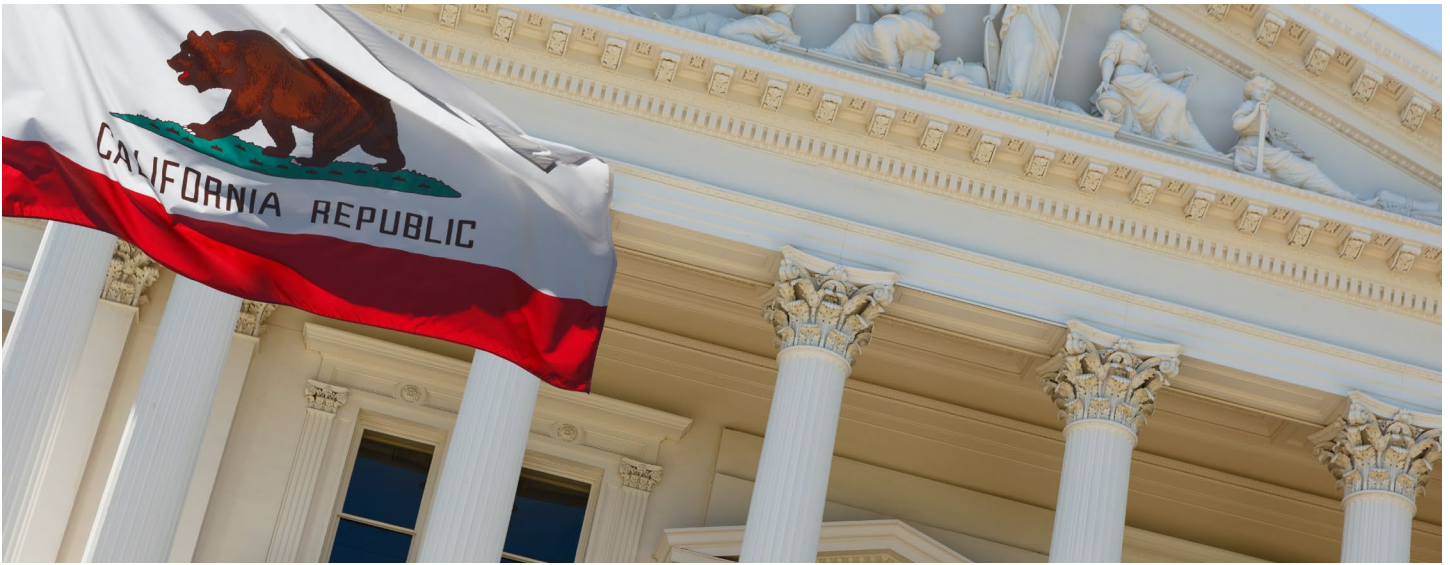
While *Navigation Holdings* reveals the sweep of CUTSA preemption, *Albert’s Organics, Inc. v. Holzman*, 445 F. Supp. 3d 463 (N.D. Cal. 2020), demonstrates how a plaintiff may be able to avoid dismissal of common law claims where it is able to plead “independently wrongful acts.” In *Albert’s Organics*, the plaintiff, an importer and distributor of specialty produce, filed suit against three of its former employees—Holzman, Akagaki, and Laffer—alleging that they had used Albert’s “confidential, proprietary, and trade secret information” to solicit business for the benefit of their new venture, a competing company called TerraFresh Organics, LLC.

On the breach of contract claim, Albert’s accused the former employees of breaching their employment agreements—which required them to safeguard the plaintiff’s “confidential, proprietary, and trade secret information.” The defendants argued that this claim was “coextensive with (or derivative of)” the trade secrets claim and was therefore superseded. The court disagreed, reasoning that the employment agreement required the employees “to safeguard *not just* Albert’s trade secrets, but also any ‘confidential and proprietary information.’” Because the defendant could breach the contract “for disclosing confidential information that does not constitute a trade secret,” the court found that there were two independent bases for finding breach, and concluded that the breach of contract claim was not superseded by the CUTSA.

Snapkeys, Ltd. v. Google LLC, 442 F. Supp. 3d 1196 (N.D. Cal. 2020), also demonstrates how plaintiffs may be able to successfully assert a claim related to trade secret misappropriation if they can argue—even narrowly—that the claim is viable “independent from any trade secret.” Here, Snapkeys and Google engaged in preliminary discussions around using Snapkeys’ technology in Google’s Android Wear smartwatches. Snapkeys alleged that Google made a number of “fraudulent and misleading promises that it would work with Snapkeys,” and that Snapkeys consequently provided Google with prototypes of its technology, “including two smartwatches with the technology installed.” Snapkeys claimed that, despite its promises, “Google ultimately declined to work with Snapkeys, and instead cooperated with a competitor of Snapkeys to develop a smartwatch keyboard that was substantially similar to Snapkeys’ technology.” Snapkeys filed a complaint against Google for various claims, including conversion.

In its claim for conversion, Snapkeys alleged that it incorporated its technology into two smartwatches, which were given to Google but not returned. Google claimed that the conversion claim was superseded by the CUTSA, and the court disagreed. Despite noting that the complaint “at times conflate[d] the value of the prototype smartwatches and the value of the underlying technology,” the court concluded that Snapkeys “had plausibly alleged that the prototypes had value independent from any trade secret.” This, the court reasoned, made the prototypes unlike “computer disks, reports, or inventory lists,” which Google cited as examples of physical objects with no substantial value independent of the information contained within them. The court held that the conversion claim was not “necessarily superseded by the CUTSA,” and denied Google’s motion to dismiss Snapkeys’ conversion claim to the extent it was premised on the value of the prototypes.

In short, whether a claim is preempted by the CUTSA is determined on a case-by-case basis and can be difficult to predict. However, companies should be aware of trends in CUTSA supersession analysis. Understanding this case law is crucial to assessing pre-litigation strategy and determining how to properly plead a case involving trade secret misappropriation.



CALIFORNIA COURTS RESTRICT ENFORCEMENT OF EMPLOYEE NON-SOLICITATION AGREEMENTS

Since *Edwards v. Arthur Andersen LLP*, the California Supreme Court's landmark decision curtailing employers' ability to restrict their employees' options after the conclusion of their employments, lower appellate courts and federal courts in California have continued to restrict employers' uses of post-employment restrictive covenants.

In the last few years, employment agreements containing restrictions on employees' and former employees' abilities to attempt to solicit their former colleagues to join a new enterprise have come under increasing scrutiny, with courts across California relying on the *Edwards* case's reasoning to bar their enforcement. For example, in *AMN Healthcare, Inc. v. Aya Healthcare Services, Inc.*, 28 Cal. App. 5th 923 (2018), a former employer forced its employees to sign a contract that barred them from soliciting their colleagues to leave its service for a year following their own separation. The California Court of Appeal refused to enforce that provision, concluding that "the nonsolicitation of employee provision in the CNDA is void under" California's competition law.

After that decision, federal district courts in California have relied on the same analysis to preclude the enforcement of agreements prohibiting the solicitation of former colleagues. See, e.g., *Barker*

v. Insight Glob., LLC, 2019 WL 176260, at *3 (N.D. Cal. Jan. 11, 2019) (concluding that "California law is properly interpreted post-*Edwards* to invalidate employee nonsolicitation provisions"); *WeRide Corp. v. Kun Huang*, 379 F. Supp. 3d 834, 851–52 (N.D. Cal. 2019) (holding that an employee non-solicitation provision was "void under California law"); *Conversion Logic, Inc. v. Measured, Inc.*, 2019 WL 6828283, at *3–4 (C.D. Cal. Dec. 13, 2019) (same).

Notwithstanding the bars on enforcement for solicitation contracts restricting ex-employees, they remain bound by general trade secret provisions, and California courts will rely on those laws to preclude ex-employees' use of information gained during their employment—even if a contract restricting solicitation directly would be suspect—as long as the former employer is able to satisfy the generally applicable requirements to qualify the information as its trade secret. Thus, an employer's strongest protection of its intellectual property after an employee's departure remains to be restricting use through trade secret laws and generally applicable non-disclosure agreements.



REASONABLE PARTICULARITY UNDER CALIFORNIA TRADE SECRET LAW

California courts continue to refine what it means for plaintiffs to identify trade secrets with “reasonable particularity.” In the past two years, federal courts have examined the use of documentary aids in identifying trade secrets, the merits of affidavits provided by experts in the field, and the burdens on defendants to explain how the plaintiffs’ descriptions prevent defendants from mounting their defense.

In 2019, a magistrate judge in California held after a motion to compel that plaintiffs may not merely reference documents without also describing which part of the document is claimed to be a trade secret. See *Alta Devices, Inc. v. LG Elecs., Inc.*, 2019 WL 176261, at *3 (N.D. Cal. Jan. 10, 2019). The court further held that reference to “generic categories” of technology is insufficient. *Id.* Rather, plaintiffs must specifically describe the technology at issue, not merely the type of technology and reference to a category in a document will not suffice. Thus, while documentary evidence can help plaintiffs identify their trade secrets, it is not enough to reference a document without also explaining in the pleadings which aspects of that document are at issue in the litigation.

In 2020, after a defendant sought a protective order from discovery due to a lack of particularity in plaintiff’s trade secret disclosure, a district court in the Northern District of California

clarified that the reasonable particularity need only be specific enough so that someone with the technical skill level of the defendant can understand the trade secret at issue, putting the burden on defendants to explain why the level of specificity provided by defendants is insufficient. *Proofpoint, Inc. v. Vade Secure, Inc.*, 2020 WL 1911195, at *7 (N.D. Cal. Apr. 20, 2020). In *Proofpoint*, the plaintiff provided an affidavit from a university professor opining that plaintiff’s disclosure enabled a person of the professor’s skill level to “understand what is being claimed as a trade secret, and to distinguish the claimed trade secrets from information or techniques generally known” in the field. *Id.* at *6. In light of this disclosure, the court held that the defendants had to explain how they were hindered “from either crafting a defense or how it would operate to hinder the court from crafting discovery parameters.” *Id.* at *7.

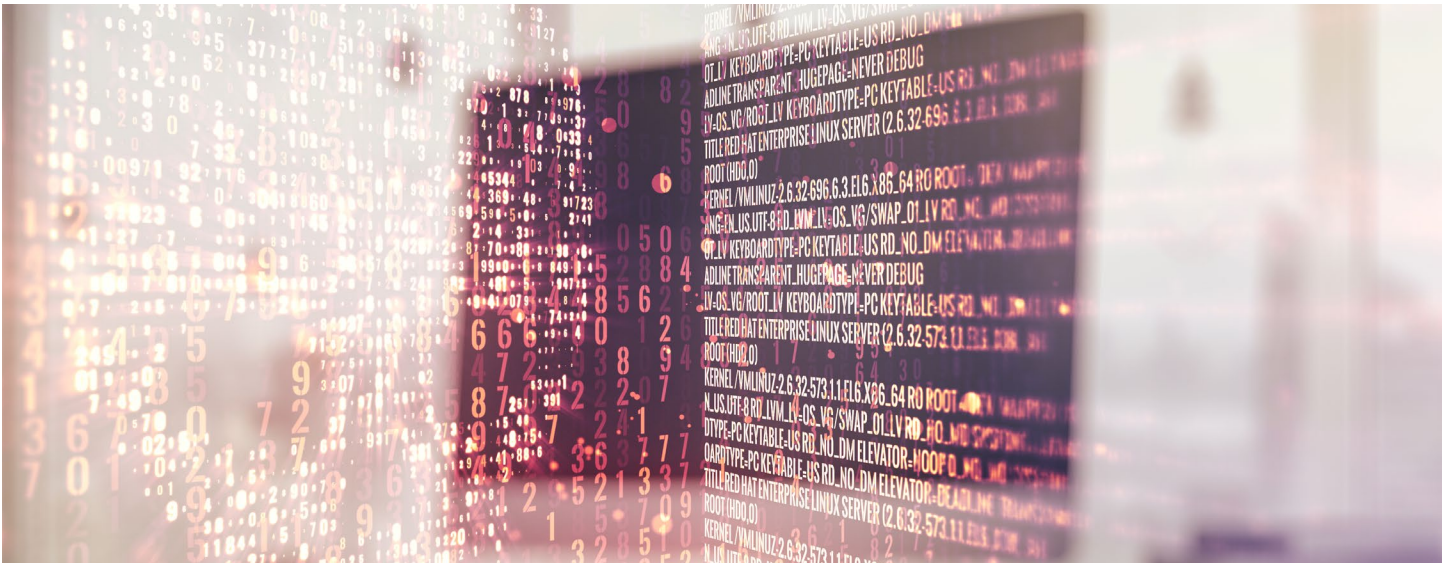
Later in the year, another district court in the Northern District of California largely approved a plaintiff’s trade secret disclosure in response to defendants’ motion to strike plaintiff’s trade secret designation alleging it to be deficient. *Cisco Sys., Inc. v. Chung*, 2020 WL 7495085, at *9–10 (N.D. Cal. Dec. 21, 2020). The defendant contended that the disclosure failed to specify which particular defendant misappropriated the information at issue. *Id.* at *10. The court rejected that argument, reasoning that the disclosure—which described the trade secrets with sufficient



particularity—put defendants sufficiently on notice about the claims against them. *Id.* The court also rejected the defendants' contention that the trade secrets were not adequately described, concluding that the plaintiff's description of a "multi-prong business expansion plan" and a "multi-step sales strategy aimed at capturing the market share," supported by documentation, provided the defendants with sufficient information "about these projects to investigate the claims against them as they pertain to that information." *Id.*

Late in 2020, the Ninth Circuit issued a decision on the issue as well. A district court had granted summary judgment on the grounds that the plaintiff failed to sufficiently identify its trade secrets, and the Ninth Circuit reversed. *InteliClear, LLC v. ETC Glob. Holdings, Inc.*, 978 F.3d 653 (9th Cir. 2020). The plaintiff had described its "unique design and concepts and the unique software, formulas, processes, programs, tools, techniques, tables, fields, functionality, and logic by which its components interrelate and process data," including two declarations setting out the details that it claimed were its trade secrets. *Id.* at 658–59. The defendant moved for summary judgment, arguing that the level of detail provided was insufficient to delineate the trade secrets from general knowledge in the industry. See *id.* The trial court agreed, but the Ninth Circuit reversed, holding that there was a genuine issue of material fact regarding whether the plaintiff had "identified its trade secrets with sufficiently particularity." *Id.* at 659.

The *Proofpoint*, *Alta Devices*, *Cisco*, and *InteliClear* decisions provide useful guidance to trade secret plaintiffs in two ways. First, plaintiffs can bolster their argument in support of reasonable particularity by providing sworn testimony from experts that the disclosure enabled them to identify the trade secret and by specifically referencing relevant documents. Second, by providing more detail initially, plaintiffs can shift the burden to defendants to explain why that level of detail was insufficient. Plaintiffs are not served by providing vague descriptions or generic references to documents. By providing as much detail as they are willing to disclose upfront, plaintiffs can avoid being forced to provide a more revealing and detailed description down the line.



TRADE SECRET PROTECTION IN JAPAN: OVERVIEW AND NEW BIG DATA RULE

In Japan, misappropriation of trade secrets is one of the acts of unfair competition that is regulated by the Japanese Unfair Competition Prevention Act (UCPA). Trade secret protection under the UCPA in Japan is similar to trade secret law in the United States.

Elements of Trade Secret Protection

Under the UCPA, a trade secret is defined as information that (i) is maintained as secret; (ii) constitutes valuable technical or business information for business activities; and (iii) is not publicly known. Typical examples of trade secrets are documents specifying manufacturing technologies or product designs, customer lists, and supplier lists.

To satisfy the requirement of secrecy, a business owning potential trade secret information must clearly inform its employees of its intention to maintain the information as confidential, and take reasonable measures to maintain the secrecy. The measures must be appropriate to the circumstances surrounding the information. These measures often include administrative safeguards (such as corporate policies and employee training), physical safeguards (such as locks on cabinets and doors, and security cameras), and technical safeguards (such as password

protection on computers), as in the United States.

The usefulness component of the definition of a trade secret means information that has a broad commercial value. The information does not need to be actually used or exploited in business activities. Most confidential information meets this requirement, as long as it is not contrary to public policy or morality.

Finally, to satisfy the non-public requirement, the potential trade secret information must not be generally known or readily available to the public.

Civil Remedies and Criminal Penalties

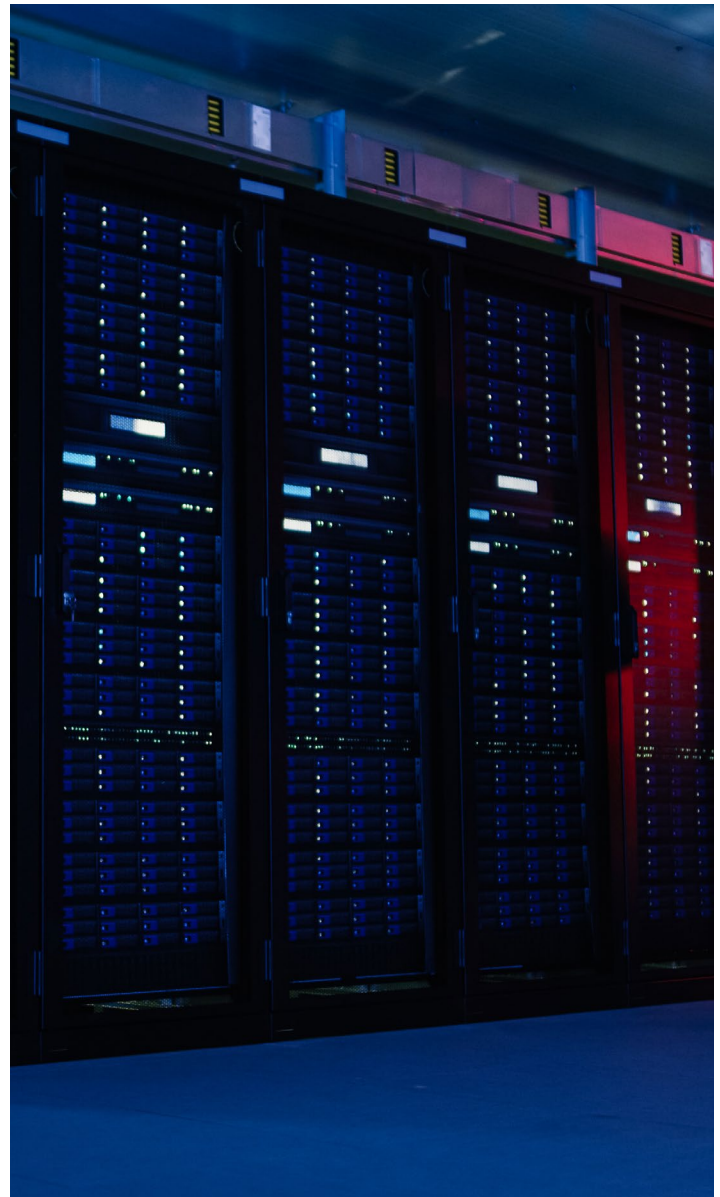
The UCPA provides civil remedies and criminal penalties for trade secret misappropriation.

First, the UCPA identifies certain types of misappropriation that can be considered “Unfair Competition.” The list includes wrongful acquisition of another’s trade secret, use or disclosure of another’s trade secret, and distribution of the products utilizing another’s trade secret. If business interests or reputation is harmed (or is likely to be harmed) due to an Unfair Competition act,

the business can seek an injunction. If a person intentionally or negligently harms a business's interests or reputation, the business can seek a court order for damages, and/or a court order to have the person who conducted the Unfair Competition act take measures to restore the business's reputation.

Second, the UCPA lists certain types of conduct that are considered criminal offenses. These criminal offenses overlap with the definition of Unfair Competition, while some factors are slightly different. For example, wrongful acquisition of another's trade secret with no intent to obtain a wrongful gain or cause damage to the owner of the trade secret is an Unfair Competition act that can be subject to civil remedies, whereas such intent is required for wrongful acquisition to be subject to criminal penalties. A person who conducts, or attempts to conduct, one or more of these criminal acts faces imprisonment for up to 10 years, and/or a fine up to 20 million Yen (\approx \$180,000). If a person conducts, or attempts to conduct, one or more of certain criminal offenses in Japan in relation to the business of the company to which the person belongs, the company faces a fine up to 500 million Yen (\approx \$4.6 million). Wrongful acquisition of another's trade secret in Japan with the intent to use it outside of Japan, wrongful disclosure of another's trade secret to a party who has the intent to use it outside of Japan, and wrongful use of another's trade secret outside of Japan are subject to heavier penalties: imprisonment for up to 10 years, and/or a fine up to 30 million Yen (\approx \$270,000) for an individual, and up to 1 billion Yen (\approx \$9.2 million) for a company.

Although wrongful use or disclosure of another's trade secret outside of Japan was a criminal offense even before 2016, wrongful acquisition of a trade secret outside of Japan was not strictly a criminal offense under the UCPA until 2016. The 2016 amendment to the UCPA changed the rule, and wrongful acquisition of a trade secret (of a business operating in Japan) outside of Japan is now a criminal offense under the UCPA. For example, a person who wrongfully acquires the trade secret of a company who conducts business in Japan stored in a server located outside of Japan may now face criminal penalties for that conduct.



Protection of “Big Data”

The most recent amendments to the UCPA strengthened data protection in Japan. These amendments protect certain types of big data, which is called “limited provided data” (*gentei-teikyo* data) in Japan. “Limited provided data” is defined as data that is (i) technical and business data; (ii) accumulated in substantial quantities; (iii) managed by electromagnetic means (excluding data that is kept as secret); and (iv) treated as data to be provided to a specific entity. If “limited provided data” of a business is misappropriated, similar to with trade secrets, a victim business can seek civil remedies (injunctive relief and damages). There are no criminal penalties for that conduct at this time.



ITC CONFIRMS THE BROAD SCOPE OF ITS TRADE SECRET JURISDICTION

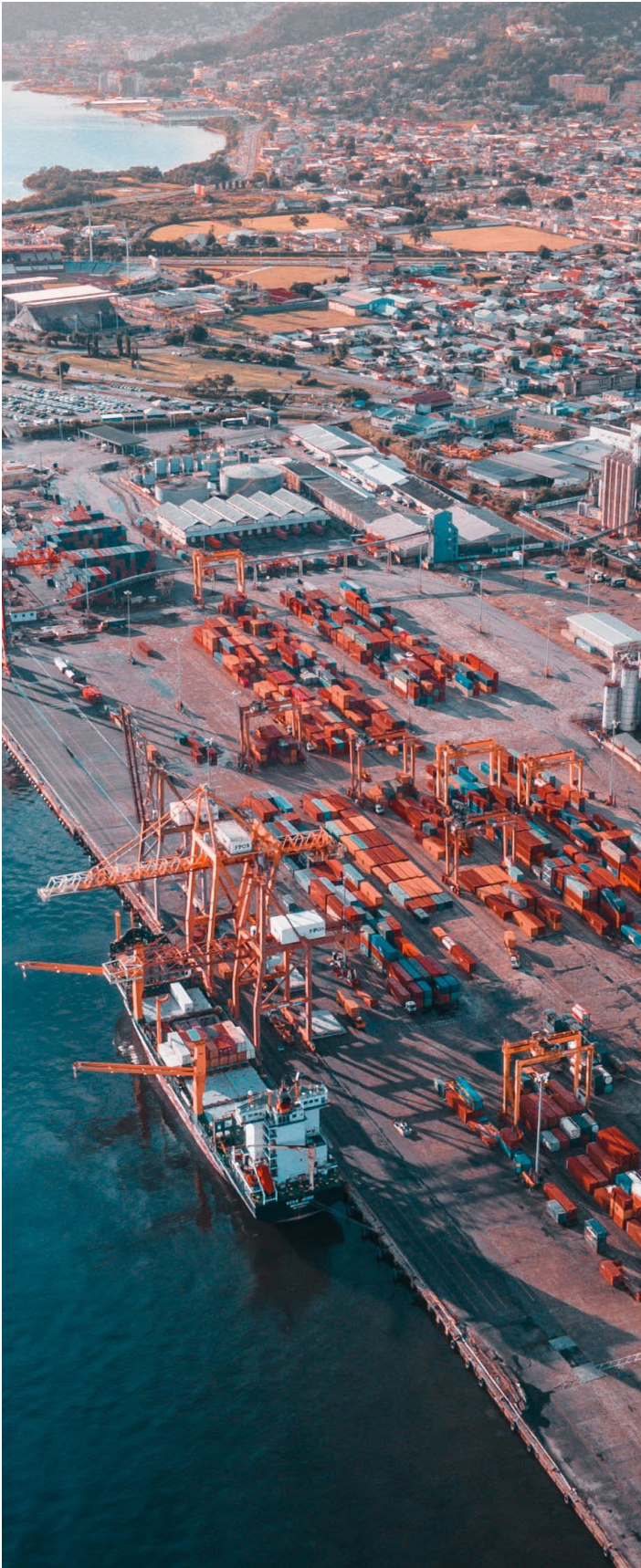
Section 337 of the Tariff Act of 1930 gives the United States International Trade Commission (ITC) the authority to investigate unfair trade practices in the importation of goods into the United States. In recent years, Section 337 investigations based on trade secret misappropriation have been steadily on the rise. Companies choose the ITC to resolve their trade secret disputes because it can provide a fast and powerful remedy, resulting in exclusion from the US market for offending products, oftentimes within as little as 18 months from the filing of the Complaint. Those factors, combined with its knowledgeable Administrative Law Judges, its broad and far-reaching discovery, and its ability to reach respondents whose only link to the US is its importation of offending products, can make the ITC the perfect forum to resolve such disputes. Indeed, as the Commission recently confirmed, the ITC is uniquely suited for combatting the importation of products made overseas through the misappropriation of a trade secret, no matter where that trade secret was developed.

The recent Commission Opinion in the *Matter of Certain Botulinum Toxin Products, Inv. No. 337-TA-1145* (the “BOTOX Investigation”) illustrates the broad powers of the ITC. In that investigation, Medytox, Inc. and Allergan plc filed a complaint with the ITC against Daewoong Pharmaceuticals Co., Ltd. and Evolus, Inc., claiming that Daewoong misappropriated a bacterial

strain and manufacturing process used to produce products that compete with the complainant’s BOTOX® products in the US market. Medytox claimed that Daewoong obtained the strain and secret manufacturing processes from a former Medytox employee. Complainants asked the ITC to exclude the offending products from the US market and to ban the marketing and sale of those products already imported.

Respondents denied the claims and asserted that the ITC lacked jurisdiction over the dispute because the trade secrets were not US trade secrets (they were developed in Korea) and because the alleged misappropriation took place outside the United States. The assigned Administrative Law Judge rejected that argument and found that the importation of the accused product into the US was sufficient to give the ITC authority over the matter. The ALJ also found that Respondents had indeed misappropriated both the bacterial strain and the manufacturing process used to make the competing products.

On review, the Commission reversed the ALJ’s decision with regard to the alleged misappropriated bacterial strain, finding that Medytox failed to show the strain was distinct from other publicly available strains and, therefore, was not a protectable trade secret. But the Commission upheld the ALJ’s findings with respect to the secret manufacturing process and issued an



exclusion order banning Daewoong's competing products from the US market for 21 months. The Commission also issued a cease-and-desist order preventing the sale of all of Evolus's previously imported Jeuveau product being held in US inventory. Significantly, in doing so, the Commission confirmed that its jurisdiction reaches misappropriation activity that occurs outside of the US even if the trade secret was also developed outside the US. The Commission declared that there is no requirement in the statute "that trade secrets be developed, created or practiced in the United States" and the importation and injury in the US satisfies the jurisdictional requirement. On February 19, 2021, AbbVie, Evolus and Medytox announced that they had entered into a settlement agreement that would resolve the ITC investigation as to Evolus. The agreement grants a license to Evolus to continue to commercialize its accused products in the United States in exchange for payments from Evolus. The matter has not been resolved as between Medytox and Daewoong.

Section 337 Investigations find their origin in the Tariff Act of 1930 and have historically been dominated by claims based on patent infringement. But the ITC has broad powers to investigate practically any unfair act in the importation of articles into the United States, including trade secret misappropriation. The Commission's Opinion in the Botox Investigation demonstrates the breadth of the ITC's jurisdiction and illustrates a recent trend in non-patent-based investigations at the ITC. Companies that have been injured by an unfair act associated with an imported product, including the unfair act of trade secret misappropriation, are well advised to consider the advantages of this forum when deciding where to have its claims resolved.

Our Trade Secrets and Restrictive Covenants Practice

Jenner & Block's Trade Secrets and Restrictive Covenants Practice is highly experienced at securing victories for our clients, as plaintiffs and defendants, both in and out of the courtroom. Our interdisciplinary team comprises members of the firm's Litigation, Intellectual Property and Labor and Employment Practices. This coordinated approach results in a team that is highly collaborative and excels at providing proactive counseling to avoid litigation and successfully and efficiently resolving litigation if it does arise. Our lawyers have litigated trade secrets cases throughout the country, in both state and federal courts, from temporary restraining orders to trial and appeals. With a proliferation of cases aimed at protecting or attacking valuable intellectual property, trade secrets are more important than ever.

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