



THE DEFEND TRADE SECRETS ACT OF 2016

**BY MARK T. CAIN
MAY 11, 2016**

Patents, copy rights and trademarks are all protected under federal law by federal civil causes of action as well as federal registration. Trade secrets, however, while the subject of a federal criminal statute that addresses misappropriation, are protected civilly only at the state level. This has just changed.

The Defend Trade Secrets Act of 2016 (“DTSA”), amends the Economic Espionage Act of 1996 so that a trade secret owner can bring a civil action in US District Court “if the person is aggrieved by a misappropriation of a trade secret that is related to a product or service used in, or intended for use in, interstate or foreign commerce.” The DTSA would not eliminate or preempt state trade secret rights but rather would operate as an additional layer of protection that can be enforced in the federal courts.

The US Senate passed the DTSA on April 4, 2016 and the US House of Representatives approved it on April 27, 2016 and was enacted on May 11, 2016. President Obama has voiced his support of the DTSA and is expected to sign it shortly. The law went into effect on its day of enactment and apply to any misappropriation that occurs on or after that date.

The DTSA defines a “trade secret” as “all forms and types” of information, regardless of how stored, if the owner thereof has taken reasonable measures to keep such information secret and the information derives independent economic value, actual or potential, from not being generally known to, and not being really ascertained through proper means by, the public. The statute of limitations for bringing an action is set at three (3) years from the date of discovery of the misappropriation. If the trade secret is “willfully and maliciously misappropriated,” a court may award exemplary damages of up to double the amount of actual damages awarded and may award reasonable attorney fees.

One of the most notable features of the DTSA is that it permits a court to issue a seizure order to confiscate goods to prevent dissemination of the trade secret if the court makes a specific finding that an immediate and irreparable injury will occur if seizure is not ordered. The court must take custody of the seized material and hold a seizure hearing within seven (7) days.

A party harmed by the order may move to dissolve or modify the order and may also seek relief against the applicant of the seizure order for wrongful or excessive seizure.

We suggest that any company with significant intellectual property assets become well versed with the protections and requirements of DTSA. A concurrent review of existing IP protection policies and procedures and related legal requirements under existing law could also be a useful undertaking.

This article is for educational purposes only and is not intended to give, and should not be relied upon for, legal advice in any particular circumstance or fact situation. No action should be taken in reliance upon the information contained in this article without obtaining the advice of an attorney.

Mark T. Cain is a member of Schell Bray's Business Practice Group and assists and advises clients in a wide range of business matters with a principal focus on commercial transactions, financing arrangements, acquisitions and intellectual property issues. For more information, contact Mark Cain at (336) 370-8863 or mcain@schellbray.com.