

Client Alert

Federalizing Trade Secrets Law: the Defend Trade Secrets Act

April 28, 2016 – The United States Congress recently passed the Defend Trade Secrets Act (“DTSA”), which President Obama is expected to sign into law in the near future. The DTSA is the first federal law to provide a civil claim for trade secret misappropriation. Although trade secret theft may be deemed a federal crime, companies that are victims of such theft are not presently permitted to seek civil damages in federal court and must seek redress in state courts. Now, under the DTSA, companies will be permitted for the first time to bring private civil lawsuits under the federal Economic Espionage Act, which previously only provided for criminal liability.

The DTSA is intended to provide trade secret protections on par with other areas of intellectual property such as patents, copyrights and trademarks, which historically have been safeguarded by federal law. Unlike varying state statutes and common law, the DTSA is intended to create a single body of federal trade secret law. The DTSA, however, will not displace any of the state precedents currently governing the misappropriation or theft of trade secrets, as state laws shall not be preempted by the DTSA. The DTSA will nonetheless provide companies with an additional forum in which to obtain injunctive and monetary relief for any misappropriation or theft of trade secrets that has previously been unavailable.

One of the more controversial provisions of the DTSA involves a potential plaintiff’s ability to apply to a federal court to order federal authorities to seize “property necessary to prevent the propagation or dissemination of the trade secret.” A plaintiff can seek this relief without providing notice to the accused party and the court can grant such relief without permitting the accused an opportunity to answer or otherwise submit a defense. One of the compromises made during the drafting of the DTSA, however, makes it clear that such *ex parte* seizures, shall only be granted in “extraordinary circumstances.” Similar to the relief available for an improper seizure under existing trademark law, the targets of these *ex parte* seizures under the DTSA will also be permitted to recover damages if it is determined that such seizures were unwarranted.

In light of the impending effectiveness of the DTSA, companies should review their confidentiality policies in their handbooks and employment agreements to ensure that they adequately protect all confidential information that qualifies for trade secret protection. It is

important for employees to have a clear understanding of the type of confidential information the company deems to be a trade secret and how that information is protected internally. Employees should also be educated to understand that they have a legal obligation not to disclose trade secrets to others outside the company during their employment and that this obligation continues after the employment relationship is terminated.

If you require any additional information about the DTSA, or any other employment-related issue, please contact:

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