

Trade Secrets

OVERVIEW

Trade secrets are prized assets that encompass an enormous variety of confidential information critical to a company's competitive advantage, reputation and brand. Given today's highly mobile workforce, complications arising when businesses jointly develop trade secret information and the increased ease with which trade secrets may be misappropriated, companies must take appropriate steps to protect their proprietary information.

McDermott's experienced trade secret lawyers work with clients in virtually every industry—from technology to life sciences, manufacturing, financial services and entertainment—to protect their confidential data. We help ensure that your trade secrets are protected from an opponent's grasp. When disputes arise, we swiftly pursue appropriate action, whether that involves emergency provisional relief, critical motion practice or going to trial.

Since the enactment of the federal Defend Trade Secrets Act (DTSA) in 2016, there has been an uptick in lawsuits involving the protection and enforcement of trade secrets in the United States. And trade secrets are increasingly important internationally—the EU has introduced its Trade Secrets Directive and Japan, Russia, China and other countries have adopted similar laws to protect trade secrets. Our lawyers are well-versed in these newly adopted laws, as well as more traditional laws developed under the Uniform Trade Secrets Act and related federal statutes such as the Computer Fraud and Abuse Act and the Economic Espionage Act.

Our lawyers have litigated and won hundreds of trade secret lawsuits and disputes over the past 25 years, in state and federal courts throughout the United States, as well as before the International Trade Commission (ITC) and several international tribunals. Many of our lawyers have technical backgrounds and prior government service; we draw on this experience to create tailor-made remedies that minimize legal and business risks.

We provide guidance on trade secret protection, unfair competition, confidentiality agreements, non-compete agreements, preventing misuse or improper disclosure of former employers' trade secrets, regulatory compliance and defending against economic espionage. We advise clients on the implications of antitrust and competition, employment, international trade, data privacy and other laws and regulations on the development and protection of trade secrets. Our lawyers also help clients address trade secret issues that arise in the context of business acquisitions, divestitures and other transactions.

We have designed numerous trade secret protection programs from scratch and use this knowledge to advise on industry-specific best practices, improve existing company protocols, develop and implement procedures to avoid breaches of confidentiality when handling third-party IP and ensure clear ownership of jointly developed information and assets.

KEY CONTACTS



A. Marisa Chun

Partner

RESULTS

- Obtained a decisive jury trial victory in the first plaintiff's verdict won by any law firm under the Defend Trade Secrets Act whereby **Dalmatia Import Group** pursued bet-the-company litigation against a former distributor and manufacturer that had launched an impersonator product
- Won a major jury trial victory on behalf of **Diablo Technologies** in its high-stakes battle with former development partner, Netlist, when it accused Diablo of eight counts of trade secret misappropriation, two counts of breach of contract, incorrect inventorship of Diablo's patent and two counts of trademark infringement and false advertising under the Lanham Act
- Represented technology company **Brocade Communications Systems** in its successful case against A10 Networks, alleging intellectual property infringement and unfair competition—after a 14-day trial, the jury awarded Brocade a complete victory, finding for the company on every count and awarding \$112 million in damages—one of the largest trade secret damages verdicts on record
- Obtained complete dismissal of trade secret claims (affirmed on appeal) for leading disk drive company **Seagate Technology** in a closely watched case that lasted more than a decade; the plaintiff Convolve, Inc. had asserted misappropriation of no less than 57 trade secrets and sought damages in excess of \$800 million
- Defended **Aristocrat Technologies**, a gaming manufacturer accused of patent infringement, misappropriation of trade secrets and other claims related to the development of a new generation of slot machines; our client prevailed on summary judgment of patent invalidity and secured a very favorable settlement for the remaining trade secret and breach of contract claims
- Defended a global provider of laser and imaging bar code scanners in a trade secrets action where the client was accused of misappropriation through the acquisition of alleged trade secret information from an ex-employee of the plaintiff
- Represented **Silicon Image** in an antitrust suit filed by Analogix Semiconductor and obtained a favorable settlement for a trade secret matter in the US District Court for the Northern District of California
- Represented **Ion Beam Applications** in a trade secrets arbitration involving ion beam accelerators used to irradiate medical targets
- Defended **Dr. Muradin Kumakhov**, a Russian physicist and inventor, in a multi-count complaint, including

misappropriation of trade secrets related to x-ray optic technology that allows x-ray beams to be focused in an unprecedented manner, resulting in a licensing agreement

- Defended a leading aerospace and defense company in a case involving the misappropriation of trade secret documents, including competitive bid proposals for a multibillion-dollar government contract
- Defended a national financial management and advisory company—in a lawsuit our lawyers settled in less than 60 days—that alleged its former executives and employees misappropriated its proprietary and confidential client information and other trade secrets and used such trade secrets to divert unfairly the plaintiff's business and/or to solicit improperly the plaintiff's employees and clients to transfer them to the national financial management and advisory company
- Represented a Software-as-a-Service (SaaS) company in successful, bet-the-company arbitration by securing a significant settlement from a former business partner and automotive dealership management and sales software company for the latter's misappropriation of our client's know-how and the latter's systematic poaching of customers with a competitive product developed with the misappropriated know-how