

# Trade Secrets Overview

**What is trade secret litigation?** Trade secret litigation involves a company's or individual's most confidential technical, financial, or business information, which the company or individual considers its "trade secrets." For example, the formula for Coca-Cola has been protected as a trade secret for over 100 years. Trade secret cases often involve a former employee who takes his or her former employer's proprietary information and discloses it to his or her new employer, which is frequently a competitor. Or the case may involve two companies in a joint venture that exchange trade secrets under non-disclosure agreements, and one company later decides to go on its own while using the other company's confidential information. In today's digital age, trade secrets are increasingly stolen by malicious hacking of a competitor's network infrastructure.

Often, the biggest challenge for trade secret owners is maintaining the secrecy of the trade secret. Once sensitive financial or business information is publicly disclosed, its value as a trade secret may be worthless. No amount of damages from a successful lawsuit may ever remedy the loss. For this reason, when trade secret theft is suspected, the owner must act expeditiously to obtain a temporary restraining order or preliminary injunctive relief to prevent the trade secret from being further exposed. Where the trade secret is kept electronically, Fish often requests the court appoint a forensic examiner to investigate the extent of the theft. A swift preliminary investigation can form the basis to then request the court take action to seize the information or thwart any further dissemination.

For an accused misappropriator, or for an employer that is alleged to have hired an accused misappropriator, engaging a forensic expert and commissioning a thorough internal investigation may prove critical to gathering evidence and establishing defenses. In addition to potential civil liability, criminal exposure is a serious risk under federal statutes such as the Economic Espionage Act and the Computer Fraud and Abuse Act. Mounting a robust defense on both civil and criminal fronts simultaneously requires experienced counsel with a strategic eye toward favorable resolution.

Once in litigation, the case often centers on whether the alleged trade secrets actually qualify for protection, whether they were misappropriated, and whether the trade secret owner suffered damages from any misappropriation. To qualify for protection, trade secret owners must prove that they took reasonable steps to protect the confidentiality of their trade secrets, such as requiring non-disclosure agreements for anyone who works with the trade secrets and limiting the distribution of the trade secrets to the smallest group necessary. Trade secret cases frequently involve expert witnesses, who testify on issues ranging from whether the proprietary information is a trade secret to whether a trade secret was stolen by unauthorized use of a computer to the value of trade secrets and damages for their theft.

Fish's trade secret experience is complemented by our subject matter expertise, which has been honed over decades of excellence in intellectual property law. As the premier patent and high-profile, complex litigation practice in the nation, Fish has unparalleled depth and breadth of technical expertise, proven trial skills, and strong industry knowledge. With our depth of technical knowledge and our unique ability to make the complex understandable, Fish has unparalleled expertise in managing, conducting and winning trade secret cases. For more information, visit [www.fr.com](http://www.fr.com).

[fr.com](http://fr.com)

Atlanta Austin Boston Dallas Delaware Houston Munich New York Silicon Valley Southern California Twin Cities Washington, DC



Fish & Richardson is a global intellectual property firm offering patent prosecution, counseling, and litigation; trademark and copyright prosecution, counseling, and litigation; and commercial litigation services. Established in 1878, and now with more than 400 attorneys and technology specialists in the U.S. and Europe, our success is rooted in our creative and inclusive culture which values the diversity of people, experiences, and perspectives. Fish is the number one ranked U.S. patent litigation firm, handling nearly three times as many cases as our nearest competitor; a powerhouse patent and trademark prosecution firm; a top-tier trademark and copyright litigation firm; and the most-active firm at the Patent Trial and Appeal Board. Fish continues to win cases worth billions in controversy – often by making new law – for the world's most innovative and influential technology leaders. For more information, visit [fr.com](http://fr.com) or follow us at @FishRichardson.