

## CLIENT MEMORANDUM

# New Federal Trade Secret Law Enacted

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## AUTHORS

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On May 11, 2016, President Obama signed into law the Defend Trade Secrets Act (the “DTSA”), creating a federal civil right of action for the theft of trade secrets. The DTSA is an amendment to the Economic Espionage Act, which previously limited federal recourse for trade secret theft to criminal prosecution by the Justice Department. A copy of the DTSA is available [here](#).

### Trade Secret Enforcement under the DTSA

Under the DTSA, the owner of a trade secret may bring a private civil action for misappropriation in federal district court “if the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce.”

The DTSA provides civil remedies for trade secret misappropriation, including injunctive relief, compensatory damages, exemplary (punitive) damages and the recovery of attorneys’ fees in the event of willful or malicious misappropriation. Misappropriation is defined as “acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means,” or “disclosure or use of a trade secret of another without express or implied consent.” Improper means “includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means,” and excludes “reverse engineering, independent derivation, or any other lawful means of acquisition.” The DTSA supplements existing state laws protecting against trade

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secret misappropriation, including the Uniform Trade Secrets Act (the "UTSA"), which has been largely adopted in all states except New York and Massachusetts.

A prominent feature of the DTSA is the availability of an ex parte civil seizure in order to "prevent the propagation or dissemination of the trade secret." This new remedy is available "only in extraordinary circumstances" upon establishing factors such as a likelihood of success in proving misappropriation, immediate and irreparable injury, and a clear showing that the misappropriator or its collaborators "would destroy, move, hide, or otherwise make such matter inaccessible to the court, if the applicant were to proceed on notice."

Like the UTSA, the DTSA provides a three-year statute of limitations and limits exemplary (punitive) damages to no more than two times the amount of monetary damages.

How trade secret misappropriation law develops under the DTSA will be closely watched in the years to come.

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