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New Federal Trade Secrets Law Offers the Automotive Industry Additional Arsenal to Fight Trade Secret Theft

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There is a growing rise in trade secret theft in the automotive industry. Fast-paced advances in automated and connected car technologies, as well as other manufacturing and technology advances, coupled with a global marketplace and interconnected supply chain makes the automotive industry ripe for trade secret theft.

The recently enacted Defend Trade Secrets Act of 2016 (the “DTSA”)—passed with overwhelmingly bipartisan support—creates, for the first time, a Federal civil cause of action for the misappropriation of trade secrets. It gives trade secret owners significant new weapons to confront the theft of trade secrets. Below are just a few of those weapons.

Access to Federal Courts

DTSA creates a federal cause of action for misappropriation of trade secrets and anyone alleging misappropriation will be able to bring a case in federal court. The access to federal courts will permit parties to more easily subpoena witnesses across state lines, to subpoena documents from out-of-state parties, and to enforce injunctions and court orders throughout the country. This is very important for an industry and for companies that span the country and even the globe.

Extra-Territorial Jurisdiction

As written, the new Act applies not only to misappropriation that takes place in the United States, but also to “conduct outside the United States.” A company or individual can be liable for trade secret misappropriation even if the misappropriation occurred abroad if they are a U.S. citizen or U.S. company, and any entity or person can be liable in the U.S. for foreign misappropriation if “an act in furtherance of the offense was committed in the United States.” This provision is highly impactful on multinational

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automotive companies or even local automotive companies who work with international clients, vendors, suppliers, or partners.

Ex Parte Seizures

The Act provides a significant new weapon, if stringent elements are met, for a party to obtain an ex parte seizure. This means that if someone steals your trade secrets, you can seek a court order to seize the trade secrets or the electronic devices or computers they are found in without providing notice to the defendant. Someone who steals trade secrets could have federal marshals arriving at their door to confiscate their computers or servers without even having a chance to be heard, or even knowing that a case was filed against them. This is intended to occur only in "exceptional circumstances" where an injunction would not suffice and where it can be shown that the person who stole the trade secret would destroy, move, or hide their actions if they were given notice of the claims against them. Such orders are meant to be extremely hard to obtain, but may be the only way to stop someone from boarding a plane out of the country with your trade secrets in tow.

All Employee Confidentiality Agreements Must be Revised

The Act contains a notification requirement that employers must immediately implement in all of their confidentiality agreements with employees, informing employees of certain whistleblower protections in the Act. Failure to include these notifications could prohibit a company from recovering untold amounts in damages if misappropriation does occur. All employee agreements regarding confidentiality should be reviewed immediately to make sure that they comply with the new law.

The threat and danger of misappropriation of trade secrets, both in money damages as well as competitive advantages, has been on the rise since 2011. If you encounter misappropriation or a threatened misappropriation, contact and engage your attorneys immediately and move swiftly. It's the only way to protect your assets.

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