

CLIENT ALERTS

View from the Trenches on the Five Year Anniversary of the Defend Trade Secrets Act

5.17.2021

May 11, 2021 marked the five-year anniversary of the Defend Trade Secrets Act (“DTSA”), which is the first federal trade secret statute with a civil cause of action enacted into law. Congress created the DTSA to foster uniformity in trade secret prosecution on a federal scale and provide litigants with easier access to federal courts, which are often better suited to handle high stakes litigation. Indeed, the DTSA provides a federal cause of action for misappropriation of trade secrets, so long as the trade secret is related to a product or service used in interstate or foreign commerce.

While trade secret litigants always had access to federal courts through diversity jurisdiction and joinder of claims, the DTSA expressly provides a federal private cause of action for the misappropriation of trade secrets. Although the DTSA does not preempt state trade-secret laws, it provides a powerful avenue for companies operating on a national scale in enforcing their intellectual property rights. For instance, filing in federal court allows litigants to more easily subpoena witnesses across state lines, subpoena documents from out-of-state entities, and enforce court orders and injunctions throughout the country.

Butzel was one of the first law firms in the nation to report on the passage of the DTSA. Soon after its enactment, Butzel assisted the Federal Judicial Center, the nation’s research and education agency for the judicial branch, in formulating the Trade Secret Seizure Best Practices, which were published nationwide. Butzel was among the select few experts in trade secrets, alongside federal judges and the U.S. Marshal’s Service, to aid in the publication.

Butzel has also been in the trenches litigating under the DTSA since its enactment. Shortly after its passing, we successfully defended against the very first application for an Ex Parte Seizure in the nation in the case of *Dazzle Software II, LLC v.*

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Kinney, Case No. 16-cv-12191 (E.D. Michigan, Slip Op. July 18, 2016). Butzel continues to defend, litigate, and be a leader on the DTSA and its implications.

As leading practitioners keeping a close eye on developments in the trade secret industry, it appears as though the DTSA has fulfilled its purpose of increasing litigant access to the federal courts.

According to data compiled by legal analytics database, Lex Machina, federal filings of trade secret cases continue to increase. In the year before the DTSA was enacted, federal trade secret cases totaled 1,075. Two years after its enactment, federal trade secret cases increased to 1,396 – a nearly 30% increase.

Since 2016, several high-profile cases included federal claims under the DTSA, including *Waymo v Uber* –one of the most watched trade secret cases of the century with nearly \$250 million at stake. In 2020, a federal jury awarded Motorola \$764 million in a trade secret case, which included a claim under the DTSA and a district court holding that the DTSA applies to the misappropriation of trade secrets that occur outside the United States under certain circumstances.

The DTSA has impacted a broad array of industries, including the automotive and criminal legal sectors. Butzel has advised clients of the impact the DTSA may have on the automotive industry and supply chain, the criminal implications of trade secret theft, and whether a business may unknowingly own protected trade secrets under the DTSA's definition of "ownership." Butzel Long continues to keep clients apprised of its impact on the trade secret world and is equipped to vigorously prosecute or defend DTSA claims.

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