

# Client Alert: President Obama Signs Defend Trade Secrets Act

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*Barack Ferrazzano Client Alert*

Earlier this week, President Obama signed the Defend Trade Secrets Act ("DTSA") into law and with it effectively federalized trade secrets law for the first time in this country's history by allowing companies to file private civil lawsuits under the Federal Economic Espionage Act.

The bill is a sweeping shake-up for American trade secrets law, which for decades was exclusively the domain of state law. It will create truly nationwide trade secrets law, give litigants easier access to federal court, and hopefully provide more certainty for those on either end of a trade secrets lawsuit.

## Changes in Store Under the Defend Trade Secrets Act

The goal of the Act is to bring the protections for trade secrets on par with those afforded to patents, copyrights and trademarks. Unlike other areas of intellectual property, up until today, trade secrets were exclusively handled under each individual state's law. By allowing for claims under a single federal statute, the Act could foster the development of unified national case law on how the law should be applied, to be harmonized by the Supreme Court when necessary and those claims can now be automatically brought in federal court. That being said, the DTSA will not replace state trade secrets law. Thus like trademark law and the Federal Lanham Act, trade secrets law and the DTSA will co-exist with existing state law.

The DTSA also allows plaintiffs to ask courts to order law enforcement officials to seize any property "necessary to prevent the propagation or dissemination of the trade secret" – all without a hearing or answer from the accused party. Such a remedy is available under both the Copyright Act and the Lanham Act in certain circumstances as well. As a limit, the DTSA states that such orders are only to be used in "extraordinary circumstances," and it lays out a clear set of requirements for those circumstances. It also requires that parties show "with particularity" what property is to be seized, as well as proof that the target of the seizure order has "actual possession"

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of the trade secret or the property. In addition, the ex parte provision also allows targets of such orders to seek damages if they feel the provision has been abused or they were unfairly targeted.

The DTSA will almost certainly lead to more trade secrets litigation. The DTSA is arriving in the wake of several developments that have weakened the strength of patent protection, like the America Invents Act and its tougher patent review proceedings, as well as Supreme Court rulings like *Alice Corp. v. CLS Bank* that have made it far easier to invalidate certain types of patents.

Companies need to be aware of the landmark changes that are going to undoubtedly take place under the DTSA. Whether they choose to use the DTSA's new seizure provisions or whether they are the target of them, the DTSA is going to usher in massive changes to the ways that companies protect and enforce their trade secrets.

## We Can Help

We will continue to monitor the DTSA and keep you informed of new developments. In the meantime, please feel free to contact us if you have any questions or concerns regarding the DTSA and we will be happy to help you navigate in these uncharted legal waters.