Civil Seizure of Trade Secrets: Swinging a Risky Hammer

Jun 21, 2016

Categories:

Publications

As I wrote in a previous blog post, the recently-passed federal Defend Trade Secrets Act ("DTSA") presents several new legal options for owners of trade secrets. One new and interesting option involves civil seizure of purportedly stolen trade secrets. To anyone who has been involved in the theft of a trade secret, that option sounds like a much improved remedy when compared to the "restraining order followed by an injunction" approach available under state (and federal) law. The new civil seizure remedy gives trade secret owners an immediate remedy that previously took weeks or longer under state law. The mechanics of that remedy involves a bit of "insider baseball" for litigators, but a hypothetical scenario should help explain this new remedy.

Woody is a "star on the rise" with Cheers, Inc., but decides an opportunity to work with GOTT, Inc. is more to his liking. But before leaves Cheers, Woody sneaks into the CEO's (Sam) office and copies to a thumb drive files that contain valuable proprietary formulas used by Cheers in its products and known only by a select few.

The next day the CTO of Cheers, Cliff, discovers that files have been copied from Sam's computer by Woody. That same day Woody abruptly quits his job at Cheers and updates his LinkedIn profile to say that he is now in charge of new product development at GOTT (nobody ever accused Woody of being smart). Cheers quickly files a lawsuit for trade secret theft against Woody and GOTT and wants its formulas returned immediately. Cheers also wants any of GOTT's formulas that include the information Woody took from Cheers.

Under the DTSA, Cheers can ask at the very beginning of the lawsuit — and without prior notice to Woody or GOTT — that the Court order Woody and GOTT to forfeit Cheers's information and possibly GOTT's formulas that Cheers can establish include stolen trade secrets. The Court will balance several factors, but could order Woody and GOTT to turn over Cheers's trade secrets, but not to Cheers. Instead, the Court takes possession to prevent a plaintiff

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

from using the seizure remedy to access a competitor's trade secrets.

Sounds great, right? As Lee Corso says, "Not so fast, my friend." The burden is high for civil seizure; the Court must find that other remedies are inadequate because, if given notice of a possible seizure, Woody and GOTT would "destroy, move, hide or otherwise make" the trade secrets inaccessible to the court. Furthermore, the DTSA also gives a private right of action to the party who was subjected to a wrongful seizure. In other words, if Cheers is wrong and GOTT can show harm that resulted from the seizure, GOTT can sue Cheers for damages. So the lesson concerning civil seizure is: you better be right.

Is pursuing civil seizure an appealing remedy for business owners? Contact Chip Campbell with your scenario.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons