WINSTON
&STRAWN
LLP

Study: Trends in Trade Secret Litigation Reveal Benefits of Proactive Protection

AUGUST 2, 2018

On July 18, 2018, Lex Machina released its first <u>Trade Secret Litigation Report</u>. The Report describes trends from litigation spanning more than 9,800 cases brought under state <u>trade secret</u> laws and the federal Defend Trade Secrets Act of 2016 (DTSA).

Several of the Report's insights are particularly salient. According to the Report, while a large number of trade secret cases do not challenge the claimants' trade secret ownership or validity, "those that do tend to find that there is no trade secret protection." When taking ownership and validity into consideration in these cases, courts analyze issues such as failure to identify a trade secret, failure to maintain secrecy, and issues relating to generally known or readily ascertainable information. The Report also indicates a significant number of cases applying equitable or time-barring defenses against claimants seeking trade secret protection. These trends highlight possible detrimental—but avoidable—conduct by companies seeking trade secret protection.

The insights offered in the Report are especially impactful in light of the 30% increase in trade secret litigation since the passage of the DTSA in 2016. This sharp uptick in trade secret litigation underscores the risks companies may face as trade secret theft and associated litigation becomes increasingly common.

TIP: Obtaining protection under trade secrets laws requires proactive steps both before any theft occurs to ensure the data meets the definition of a "trade secret," and promptly after theft is suspected to maximize success in litigation.

1 Min Read

Author

<u>Steven Grimes</u>

Related Locations

Chicago

Related Topics

Trade Secret   Data Breach

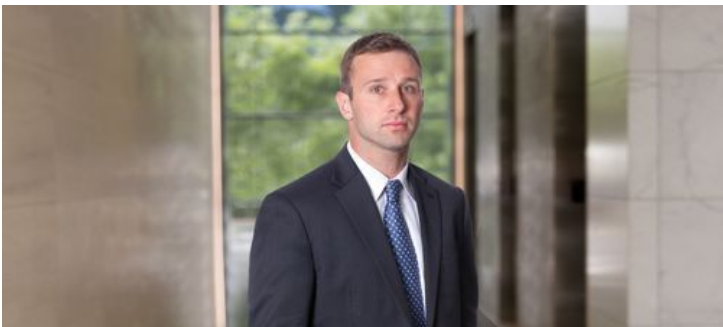## Related Capabilities

Privacy & Data Security   Trade Secrets, Non Competes & Restrictive Covenants

Related Regions

North America

Related Professionals

Steven Grimes

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.