

Shannon Murphy Shares Lessons for Litigators and In-House Counsel for Protecting Trade Secrets

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On May 30, Winston & Strawn Partner Shannon Murphy presented IPO's IP Chat Channel webinar "[Reasonable Measures to Protect Trade Secrets: Lessons for Litigators and In-house Counsel](#)." The program provided a look at what is required to have a trade secret, how courts are assessing reasonable measures to keep information secret, challenges when attempting to deploy reasonable measures, and practical guidance for companies looking to protect their information.

Panelists acknowledged that U.S. state and federal trade secret laws, the EU Directive, and trade secret laws in China, Japan, Taiwan, and Korea require that a company take reasonable efforts to keep information secret for it to qualify as a trade secret. However, there are no bright-line rules when it comes to whether particular measures are "reasonable." It will always be a fact-specific inquiry based on a company's particular circumstances and driven by, among other things, the size of the company, the value of the trade secret at issue, and the burden of taking certain measures. In fact, many trade secret cases have been dismissed because the plaintiff failed to plead or prove that it took sufficient protective measures.

When analyzing cases from 2009-2018, the panelists concluded that:

- Taking no or little measures will not be sufficient;
- A company may be required to take measures to protect trade secrets above and beyond typical business practices;
- Utilizing confidentiality agreements is helpful, but may not suffice;
- Failing to take steps to ensure departing employees do not keep information may be deemed unreasonable; and
- Marking documents as confidential/trade secret is a helpful measure, but having a robust marking policy that is not followed can undermine a trade secret claim.

For more on trade secret protection read the article "[Reasonable Measures' For Protecting Trade Secrets: A Primer](#)" or visit Winston's [Privacy & Data Security Law Blog](#).

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