

Court Battle Between India's SaaS Industry Leaders Being Fought in California

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A District Court in the Northern District of California recently denied defendant's motion to dismiss a trade secret misappropriation case that was precipitated by the alleged theft of Software-as-a-Service (SaaS) technology from a company based in Chennai, India. *Zoho Corp. Pvt. Ltd. v. Freshworks, Inc.*, 2020 WL 6687393, at *1 (N.D. Cal. Oct. 27, 2020). Zoho has brought claims under the Defend Trade Secrets Act (DTSA), alleging that Freshworks' founder stole Zoho's Customer Relationship Management tool, when he resigned from his position as a product development manager for Zoho to start Freshworks.

Interestingly, even though both parties operate in Chennai and the alleged theft occurred in India, Zoho has opted to litigate its claims in the United States. This is likely because the DTSA provides a more robust legal regime for the protection of trade secrets compared to Indian law. There is no specific trade secret law in India, but instead, trade secrets can be protected through breach of contract claims and an independent tort for breach of confidence. Thus, it may be advantageous for Indian entities to seek protection for their trade secrets from a U.S. court under the DTSA, especially where neither a contract nor confidential relationship are implicated.

U.S. forums are available to foreign plaintiffs even where the defendant is also foreign. The DTSA provides for long arm jurisdiction over foreign entities provided that one of two prongs are satisfied. The DTSA "applies to conduct occurring outside the United States if—(1) the offender is a natural person who is a citizen or permanent resident alien of the United States, or an organization organized under the laws of the United States or a State or political subdivision thereof; or (2) an act in furtherance of the offense was committed in the United States." 18 U.S.C. § 1837. Although the reach of this extra-territorial jurisdiction is still being tested in the courts, there is a noticeable trend in non-U.S. companies bringing trade secrets claims to the American court system.

In the *Zoho v. Freshworks* case, plaintiffs claim that the foreign defendant committed "an act in furtherance" of the misappropriation in the U.S. See, e.g., *Inventus Power, Inc. v. Shenzhen Ace Battery Co.*, 2020 WL 3960451, at *7 (N.D. Ill. July 13, 2020) (finding the DTSA's long arm reach extended over misappropriation by a Chinese entity, because it "marketed and sold in the United States the battery products for which the trade secrets were allegedly taken.").

TIP: Companies operating in jurisdictions with less developed trade secret laws, like India, might look to determine whether there is a nexus to the U.S. and attempt to use the more developed trade secret protections

of the DTSA to litigate claims of trade secret misappropriation.

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