

Cutting Edge Developments In Trade-Secret Law

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Fredrikson

The logo for Fredrikson, featuring the name "Fredrikson" in a bold, black, sans-serif font. A red horizontal bar is positioned below the "Fred" portion of the name, extending from the left edge of the text.

Recent Trends

Erosion of Non-Compete Enforceability

Emphasis on Trade-Secret Identification

Extra-Territoriality

Artificial Intelligence

Non-Compete Bans

- FTC Bans Non-Compete (16 CFR Part 910).
- Minnesota Bans Non-Competes (Minn. Stat. §181.988).
- Numerous Other States Ban Non-Competes or Restrict Them To Higher Income Employees (California, North Dakota, Oklahoma, Washington, Oregon).
- FTC and Minnesota Specifically Point To Trade-Secret Law As An Alternative to Non-Competes.

Emphasis On Trade-Secret Identification

- Statutory Disclosure Requirements (Cal. Civ. Proc. Code § 2019.210).
- Reasonable Particularity Standard (*CleanFish, LLC v. Sims*, 2020 WL 4732192 (N.D. Cal. August 14, 2020)).
- Sufficient Information To Infer More Than The Possibility of Misconduct (*Ahern Rentals, Inc. V. EquipmentShare.com Inc.*, 59 F.4th 948, 955 (8th Cir. 2023); *American Achievement Corp. v. Jostens*, 622 F.Supp.3d 749 (D. Minn. 2022)).
- Sufficiency Of Pleading Is Very Jurisdiction Dependent.

Extra-Territoriality

- Generally, State Trade-Secret Statutes Require A Nexus With The State (Presumption Against Extra-Territorial Application).
- Under the DTSA, “an act in furtherance of the offense must be committed in the United States” for there to be jurisdiction. 18 U.S.C. §1837
- Courts have applied federal conspiracy law, so act must take place to during scheme to misappropriate.
- Cannot Contract Around Jurisdictional Issue In A Court Action.

Artificial Intelligence

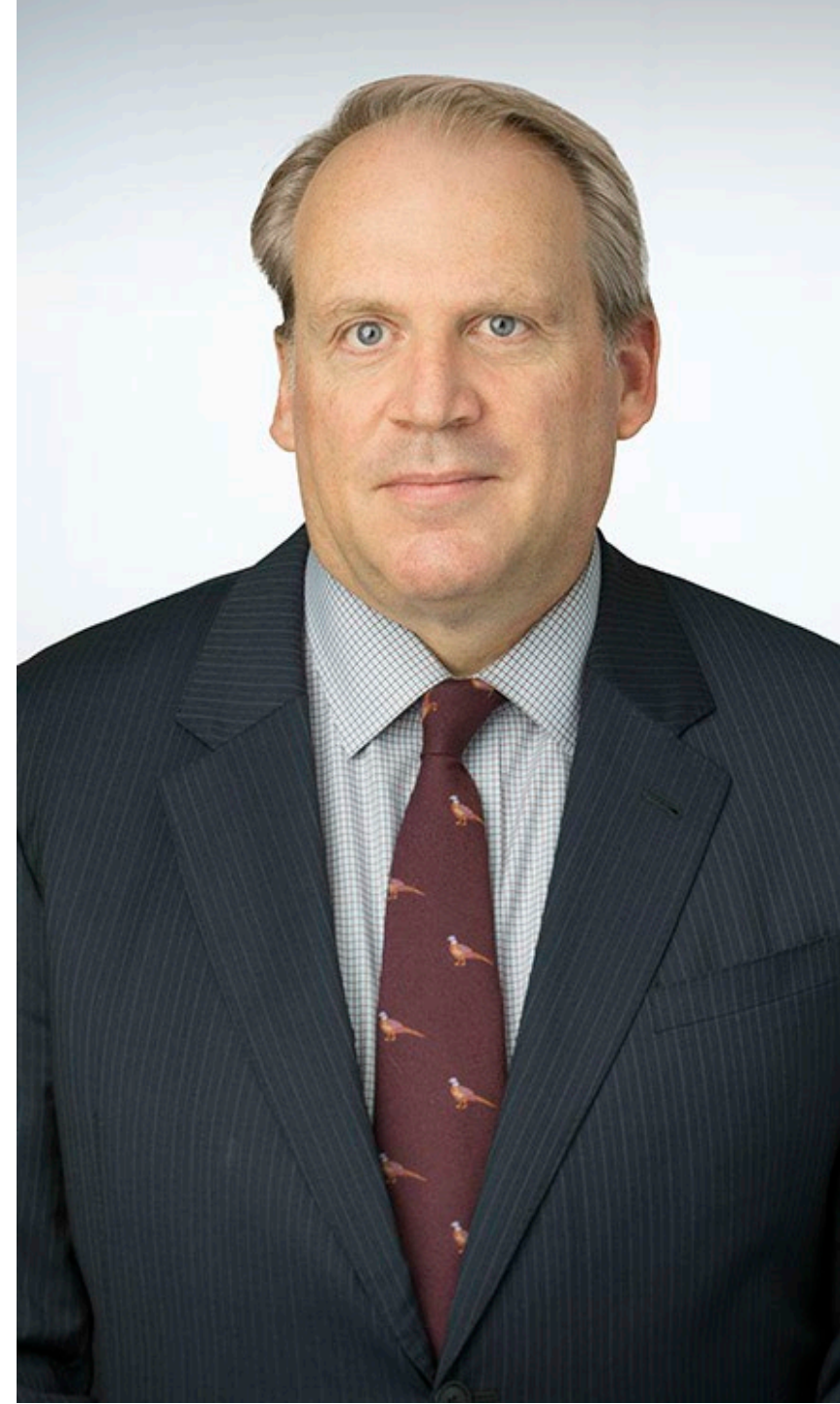
- Public Disclosure Eliminates Trade-Secret Status.
- Different AI Engines Have Different Policies And Many Are Still Developing Their Policies
- Need To Get Policies In Place Regarding Use of AI

Resources

- [Practical Strategies To Protect Trade-Secrets Article](#)
- [Reasonable Measures Checklist](#)
- [Due Diligence Checklist](#)

Presenter

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