

Preliminarily Enjoin Alleged Trade Secret Misappropriation Without Addressing A Time Bar Defense under the DTSA?

A photograph of a modern building with a curved facade and large glass windows, set against a light blue sky. The building is partially obscured by the title text.

2 MIN READ

May 6, 2024, 4:38 PM

By: Nicholas Duffee, Matthew S. Murphy

A trade secret owner must file a civil action under the Defend Trade Secrets Act (“DTSA”) within three years of when the alleged trade secret misappropriation “is discovered or by the exercise of reasonable diligence should have been discovered.” 18 U.S.C. § 1836(d). Thus, time-bar defenses ordinarily raise thorny factual questions concerning a plaintiff’s knowledge of a defendant’s alleged misappropriation. Can a time-bar defense foreclose the entry of a preliminary injunction under the DTSA?

Today, the U.S. Court of Appeals for the Federal Circuit heard oral argument in *Insulet Corp. v. EOFlow Co.*, No. 2024-1137, which is an interlocutory appeal of a preliminary injunction awarded under the DTSA. EOFlow argued that Insulet could not show a likelihood of success on the merits as its claims are time-barred. EOFlow noted that Insulet representatives observed the product, designed by former Insulet employees, which allegedly misappropriated Insulet’s trade secrets more than five years before filing suit. EOFlow claims that Insulet did not care enough to file suit until it learned that a competitor, Medtronic, may acquire EOFlow and thus bring the accused product to a wider audience. Nevertheless, the district court issued a preliminary injunction against the product and “express[ed] no opinion about the accrual of the statute of limitations.” Insulet, for its part, argued that the district court impliedly addressed the statute of limitations in other sections of its opinion about whether Insulet’s delay in seeking an injunction affects irreparable harm.

At the risk of reading too much from the tea leaves, the panel seemed skeptical of a preliminary injunction opinion that does not address the applicability of a statute of limitations to the plaintiff's likelihood of success on the merits. Judge Lourie asked Insulet's counsel: "The Court did not address the statute of limitations. Isn't that a fatal defect?" Similarly, Judge Stark inquired of Insulet: "The statute of limitations was at issue, the judge was wrong about that, correct? Did he address that?" Counsel for Insulet responded in part that "the district judge said what he said." Finally, Judge Prost inquired: "Why did the judge not reach the statute of limitations? Does that not raise suspicions?" That being said, Judge Prost acknowledged Insulet's argument when she inquired of EOFlow's counsel: "The judge did talk about the delay issue, can't we use those findings to also cover the statute of limitations?"

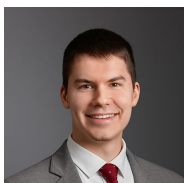
Regardless of whether the Federal Circuit vacates or remands the district court's entry of a preliminary injunction, Plaintiffs should be mindful of potential time-bar defenses and the factual quandaries they might raise when considering early requests for injunctive relief. An aggressive request for preliminary relief could result in a finding of fact or legal holding that at least disrupts, if not spoils, a litigation strategy before it gets off the ground.



Related People



Matthew S. Murphy



Nicholas Duffee

Related Services

Intellectual Property

To subscribe to our publications, [click here](#).

TAGS

trade secrets

News & Insights

- GCR Live: Law Leaders Global 2025
SPEAKING ENGAGEMENT ANTITRUST
- NYC Bar Trade Secrets Symposium 2024: Navigating the Law of Trade Secrets and Restrictive Covenants
SPEAKING ENGAGEMENT INTELLECTUAL PROPERTY
- Stakeholders 24th Annual CYOC Career Development Conference
SPONSORSHIP
- IAM Connect Patent Policy and Litigation Conference 2024
SPEAKING ENGAGEMENT INTELLECTUAL PROPERTY

- **CompLaw 33rd Annual Advanced EU Brussels Conference**
SPEAKING ENGAGEMENT
- **AIC General Counsel Day 2024**
SPEAKING ENGAGEMENT | ANTITRUST
- **ALM General Counsel Conference East 2024**
SPEAKING ENGAGEMENT | ANTITRUST
- **Navigating Global Politics: The Future of Antitrust Merger Policy and Foreign Direct Investment (FDI)**
WEBINAR | ANTITRUST
- **Global Legal Group Global Class Actions Symposium 2024**
SPEAKING ENGAGEMENT | LITIGATION & TRIALS
- **ITCTLA Mock Hearing Program 2024**
SPEAKING ENGAGEMENT | INTELLECTUAL PROPERTY