

Reading Tea Leaves: Oral Arguments in *Motorola v. Hytera* and the Extraterritorial Reach of the DTSA

A photograph of a modern building's curved glass facade, showing multiple stories and windows, set against a light blue sky.

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Last week, the Seventh Circuit heard arguments in *Motorola Solutions, Inc. v. Hytera Communications Corp.* concerning when, if at all, civil claims under the Defend Trade Secrets Act (“DTSA”) may extend to extraterritorial sales. Based on the panel’s questions, the Seventh Circuit is likely to offer litigants critical guideposts for understanding when “an act in furtherance of the offense” takes place in the United States and when trade secret owners may claim damages based on foreign sales under the DTSA.

As we previously explained, the parties disputed whether civil actions under the DTSA, as opposed to criminal actions under the Economic Espionage Act, may extend to acts of misappropriation generally undertaken outside the United States. The panel focused its questions on the alleged domestic “act[s] in furtherance of the offense” and the assessment of damages based on foreign sales when such acts do occur in the United States, which suggests that the Seventh Circuit is likely to affirm that the DTSA may extend extraterritorially under at least certain circumstances.

What acts had Hytera allegedly undertaken in the United States in furtherance of the misappropriation? First, Hytera personnel were alleged to have obtained trade secret information from a remote server in Malaysia, which mirrored “main servers” located in Illinois. On this point, Judge Hamilton asked, “isn’t there a server in Malaysia?” Needless to say, the court is thinking carefully about whether acquiring information via a server outside the United

States that mirrors or accesses a system located in the United States is a sufficient act in furtherance of the offense.

Second, Motorola argued that Hytera attended trade shows in the United States to promote products featuring the misappropriated technology to international customers. Hytera countered that there was no evidence establishing a sufficient nexus between its attendance at trade shows in the United States and the foreign sales for which Motorola obtained damages. On this point, Judge Hamilton asked Hytera if the alleged act in furtherance of the misappropriation in the United States must be tied to each foreign sale, and Hytera responded that the bar does not require sale-by-sale evidence but does require some evidence connecting Hytera's trade show activity to the foreign sales awarded as damages.

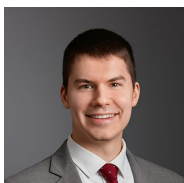
Given the panel's questions and the litigants' responses, the Seventh Circuit appears positioned to provide much needed clarity on (i) what types of activities in the United States may impose liability under the DTSA for misappropriation taking place abroad, and (ii) the degree of a defendant's exposure to damages claims based on international sales.



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