



## The New President Will Need To Get Tough on Trade Secrets

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[\[Link\]](#)

As the intense US election campaigns drew to a close last night, and Americans cast their final votes today, what would a Harris or a Trump presidency look like for IP?

According to the polls and pundits, it could go either way. As part of our trade secrets focus month, the impact on this increasingly important area of IP is on our minds here at *WIPR*.

Would Donald Trump scrap the Federal Trade Commission's (FTC) ban on non-competes? The Republican commissioners at the FTC (Melissa Holyoak and Andrew Ferguson) [voted against the ban](#) in April this year in a three-two vote.

And Trump-nominated US District Judge Ada Brown [blocked the ban](#) in the Northern District of Texas in August. Meanwhile, Kamala Harris has [supported the ban](#), albeit prior to the election campaign.

Business groups [challenging the ban](#) in the courts will be keen to discover whether they have the backing of the new incumbent.

One thing is certain: trade secrets disputes are rarely out of the news. And, given its growing importance as an IP practice area, with an increasing [number of big ticket cases](#) testifying to that, the new US president might be forced to confront the economic, security and legislative issues they present.

Here are three trade secrets stories from the past week alone that illustrate the importance that US corporations place on protecting unregistered IP.

Oracle sues Procore over software

Texas-based [Oracle](#) is suing [Procore Technologies](#) in a California federal court, accusing a former employee of taking trade secrets with him to his new job—in a dispute typical of the trade secret cases that have emerged in recent years.

Oracle claims its former employee, Mark Mariano, retained Oracle computers containing the trade secrets “long after he left”, going on to offer this confidential information to his employer Procore.

According to the lawsuit filed on October 28, those trade secrets enabled Procore to quickly bring to market a technology to compete against Oracle products.

[Jeff Farrow](#), trade secrets, financial fraud and executive disputes chair at Michelman & Robinson, says: “This lawsuit highlights the need for technology companies to be proactive when safeguarding their trade secrets.

“Companies not only need to continually audit their own employees’ access, use and copying of sensitive information, but they also need to have robust procedures in place to ensure when an employee leaves that person returns all such information.”

**For [Kyle Ryman](#), an attorney at McKool Smith, the complaint illustrates how companies are increasingly turning to trade secrets law as an alternative to increasingly controversial non-compete agreements.**

**“Oracle’s suit is just the latest instalment in that trend. It’s a good reminder for companies to make sure their new employees affirm in writing they didn’t bring with them any trade secrets from their old employer.**

However, he points out that Oracle’s case has “some warts”, highlighting the burden of ‘reasonable measures’ in trade secret cases.

**“Information is not a trade secret if you don’t take reasonable measures to protect it,” adds Ryman.**

**“And Oracle is a sophisticated company with vast resources. How is it that an Oracle employee was using his personal cloud storage to store purported trade secrets, including source code?**

**“How is it that Oracle wasn’t tracking that the employee took his laptop with him after left Oracle? The jury is going to want to know.”**

US indicts Chinese hedge fund executive

A Chinese hedge fund executive, Xiao Zhang, was indicted in the US on charges of stealing trade secrets from his former employer, where he was previously an associate.

The indictment, filed in the [US District Court for the District of Massachusetts](#) on October 31, alleged that Zhang, who had previously worked at Arrowstreet from 2015 to 2021, copied proprietary research, code, and project files.

While the indictment did not name either company directly, regulatory records from the [Asset Management Association of China](#) link Zhang to [Arrowstreet](#) before he established his own firm, Pinestone Asset Management, in China.

Arrowstreet is a Boston-based investment management firm that managed \$171 billion worth of assets in March 2023.

The indictment claimed that after leaving the US for China, in August 2021, Zhang used a virtual private network to bypass the unnamed company's security and access its network remotely.

The prosecutors said: "Zhang then made copies of Company A's code and projects located in its code-management platforms, and also made copies of folders on [its] internal research drive."

He then allegedly sent this information, including a trade secret belonging to the company, through a file-sharing application he had installed and was able to evade the firewall.

The indictment said Zhang took "a trade secret of Company A with the intent of using it to assist Company B"—Company B being the investment firm he established in China.

The jury charged Zhang with intending to steal and share a trade secret related to investment strategy development—a product used in both US and international markets.

### Crypto wars

A dispute between a pair of crypto companies played out in a New York court last week, on October 31, underscoring the importance of clarity in trade secrets cases.

While the US district court in Manhattan gave the green light for [Citadel Securities](#)' suit against crypto-trading startup [Portofino Technologies](#) alleging trade secrets theft, it flagged a number of issues with the quality of its complaint.

Last year, Citadel Securities sued former worker Leonard Lancia and Alex Casimo, saying they had stolen information to strengthen their own crypto-based market-making firm, Portofino.

Portofino countered by pointing to the "amorphous categories" outlined in the plaintiff's complaint.

District Judge Gregory Woods partially rejected Portofino's bid to dismiss the case, but agreed that Citadel Securities needed to supply more evidence to support its claims of theft.

The court dismissed Citadel Securities' arguments that Portofino violated the employment contracts of three Citadel employees, but gave the startup an opportunity to file an amended complaint.