

WSGR ALERT

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FEDERAL CIRCUIT AFFIRMS ITC IMPORTATION BAN PREMISED ON TRADE SECRET MISAPPROPRIATION IN CHINA

International Trade Commission (ITC) actions are virtually synonymous with patent litigation. When a company seeks to bar the importation of a competing product through the ITC, the grounds are almost always that the product infringes a U.S. patent.

But the ITC also can be a forum for trade secret actions, as was dramatically illustrated in the Federal Circuit's October 11, 2011, decision in *Tianrui Group Ltd v. ITC*.

In that action, the ITC barred the importation of a product after a Chinese company engaged in trade secret misappropriation in order to manufacture the product in mainland China. The plaintiff, a U.S. company, owned the trade secrets, and originally had disclosed them to a business partner in China. The defendant, a Chinese company, hired several employees from the business partner. Those employees then allegedly disclosed the U.S. company's trade secrets in order to make a competing product, which was the subject of the ITC complaint.

Over a strong dissent—which complained that the ITC should not adjudicate acts of unfair competition that took place wholly in another country—the Federal Circuit affirmed the ruling. In doing so, the court applied a federal common law of trade secrecy rather than the Uniform Trade Secrets Act.

The decision is significant for two reasons. First, companies can expect the ITC to be used more aggressively as a forum to litigate trade secret actions involving allegations of overseas misappropriation, though it is unclear whether the same result would have occurred if the plaintiff had not been a U.S. company that originally developed the trade secrets within the U.S.

Second, the case is symptomatic of a greater federal interest in trade secret law, which is normally the province of the states. It comes on the heels of a new Congressional proposal in October 2011 to further federalize trade secret law, as well as case law around the country that has allowed litigants to use the federal Computer Fraud and Abuse Act to cover ground traditionally overseen by state trade secret law. Only time will tell how this creeping federalization will affect the many unsettled questions courts face in trade secret litigation.

For more information on these ITC actions and trade secret law in all of its various forms, please contact Stefani Shanberg, Larry Shatzer, Charles T. Graves, or any member of Wilson Sonsini Goodrich & Rosati's intellectual property litigation and counseling practice.



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