



Kobre & Kim's Intellectual Property Disputes Team



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Clearing Your Name: Fending Off Trade Secret Theft Judgment Claims

Trade secret theft disputes involving U.S. and Chinese companies have been a point of tension within the ongoing U.S.-China trade war. Below, our team lays out the third and final chapter of "Clearing Your Name," which lays out cross-border trade secret theft allegations against Chinese companies. Here, the team provides strategic guidance for entities that may find themselves on the wrong end of an abusive cross-border judgment or injunction.

[Click here to read "Clearing Your Name against U.S. Civil Trade Secret Theft Claims" Part 1 of our "Clearing Your Name" series.](#)

[Click here to read "Clearing Your Name: When Trade Secret Disputes Become a National Security Issue" Part 2 of our "Clearing Your Name" series.](#)

Chinese companies are facing more and more U.S. entities accusing them of stealing trade secrets. Accusers who obtain a judgment can use it to interfere with a company's normal commercial activities, having the potential to significantly hurt the bottom line.

To prevent and protect against a judgment, Chinese entities must understand both their own vulnerabilities and their legitimate rights before and after judgment. To prepare, parties should gear up for a global defense campaign and assert their rights in jurisdictions key to their operations.

Know Your Weak Spots for Abusive Injunctions

Even before any accusation is made, Chinese companies should regularly probe their assets, commercial ties, supply chains, relationships with customers and financial institutions, and even a company's own executives across the world to see if any are vulnerable to abusive freezing or seizing orders.

If an accuser is indeed trying to freeze assets, companies can ask a court to make the accuser post a bond protecting the damage that an unjust freezing injunction could inflict. The cost of the bond can discourage accusers from pushing for a freeze and ensure that companies are duly compensated for any unjust freezing.

Draw Clear Lines Across Your Entities

It is important to maintain clear documentation showing that corporations are separate entities in order for companies to protect their shareholders and sister companies with "corporate separateness," the idea that corporations are separate from their owners and other corporations. Drawing these lines can pre-empt and protect against attacks from entities trying to seize shareholders' or affiliates' money.

Don't Take Abusive Practices Lying Down

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Some attackers might see a judgment as a green light to interfere in a company's business. Chinese companies facing an overzealous accuser should be aware of their rights and the legitimate tools at their disposal. If an accuser is disrupting normal business activities, companies should consider taking them to court for interference or breach of contract. Illegitimate attacks may occur in separate countries, so Chinese companies should not hesitate to go to foreign courts to prevent them from recognizing the judgment on public policy grounds in those countries.

As the ongoing U.S.-China trade war has shown, U.S. companies and government agencies are willing to deploy all possible legal tools at their disposal in prosecuting Chinese companies. Pre-emptively preparing a defensive strategy that considers not only judgment defense, but also other likely scenarios – from a civil IP theft dispute to U.S. criminal proceedings under the umbrella of national security – can be quite effective, and will require an in-depth, up-to-date understanding of information protection standards in both China and the U.S.

About Kobre & Kim's Intellectual Property Disputes Team

Kobre & Kim is a global law firm focused on cross-border disputes and investigations, often involving fraud and misconduct. Our conflict-free model allows us to advocate aggressively on behalf of our clients, even in the face of the industry-wide opposition common in trade secret cases.

Our Intellectual Property & Technology Litigation team understands the complex technologies that are often at the center of these types of disputes, and is well-versed in advocating for clients in complex disputes in the U.S. courts and other English-law-based jurisdictions.

Frequently working with other law firms as special counsel, Kobre & Kim regularly represents China-based clients in high-stakes cross-border disputes. The Shanghai-based team includes the only former U.S. prosecutor in China from the Department of Justice's National Security Division. The team also offers native language support including Mandarin, Cantonese and Shanghainese.