

# New Rules Re Burden of Proof

## --What can we expect?

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### ⑩ Article 32 of the 2019 Amendment of Anti-Unfair Competition Law

- In the civil trial procedure for infringement of a trade secret, if the right holder of the trade secret *provides prima facie evidence that it has taken confidentiality measures for the claimed trade secret and reasonably indicates that the trade secret has been infringed upon*, *the alleged tortfeasor shall prove that the trade secret claimed by the right holder is not the trade secret as described in this Law*.
- If the right holder of a trade secret *provides prima facie evidence to reasonably indicate that the trade secret has been infringed upon, and provide any of the following evidence*, *the alleged tortfeasor shall prove the absence of such infringement*:
  1. Evidence that the alleged tortfeasor has a channel or an opportunity to access the trade secret and that the information it uses is substantially the same as the trade secret.
  2. Evidence that the trade secret has been disclosed or used, or is at risk of disclosure or use, by the alleged tortfeasor.
  3. Evidence that the trade secret is otherwise infringed upon by the alleged tortfeasor.

### ⑩ Two presumptions:

- The burden of proving something is not a trade secret is assigned to the defendant.
- The burden of proving non-infringement of trade secret is partially transferred to the defendant.