

Investigation & International Cooperation on Trade Secrets Theft



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Primary Issues in Trade Secrets Investigations and Prosecutions

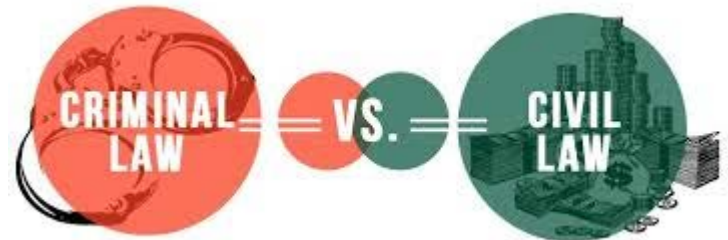
- Industry Referrals
- Insider or Outsider
- Physical or Electronic
- Mental state
- Alternative charges
- Valuation
- Industry support
- International Cooperation



Industry Referrals



- Victim is business or company
- Victim wants justice, but not publicity
- Industry POC critical
- Criminal or civil?



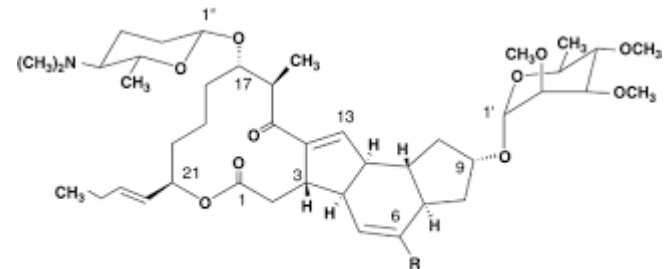
Insider v. Outsider

- Departing employee takes confidential work product
- Outsider actor penetrates company security
- Determines focus of investigation



Physical or Electronic?

- Physical: files; prototypes; photos; biological materials; seeds
- E-files; flash drives; emails
- Shapes investigative methods



(3) Spinosyn α1 (R = H)
(4) Spinosyn δ1 (R = CH₃)

Proving the Required Mental State

- **Biggest challenge of trade secrets cases**
- **Trade secrets theft = knowledge of injury & intent to benefit another**
- **E-communications critical**
- **Contracts w new employer**
- **Cover-up = guilty conscience**



Alternate Charges

- Safety net + assets + impact
 - Stolen property
 - Fraud
 - Inchoate crimes, e.g., attempt or conspiracy
 - Smuggling
 - Money laundering
 - Racketeering



Valuation

- Lack of actual sales data
- Pre-commercialization
- Using R&D costs can produce unrealistic value
- Trade secret owners reluctant to share inside data



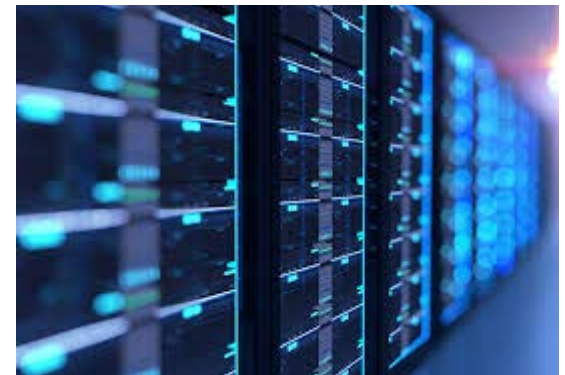
Industry Support

- Industry = IPR victim and *expert*
- Industry identifies and refers to law enforcement biggest offenders
- Industry support critical for criminal investigation and prosecution



International Cooperation

- Most corporate espionage and trade secrets theft cases transnational
- Most involve electronic evidence on servers elsewhere
- Many involve transfers of IP overseas
- Critical need to preserve evidence
 - G-7 24/7 High Tech Crime Network
 - Budapest Convention on Cybercrime
- Mutual legal assistance v. joint investigations





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