

## **Alert | Trade Secrets**



July 2026

### **Fifth Circuit Case Shows Misappropriation Allegations May Trigger Broader RICO Exposure**

In 2016, Congress passed the Defend Trade Secrets Act (DTSA), which, among other things, amended the longstanding statute used to combat organized crime: the Racketeer Influenced and Corrupt Organizations Act (RICO). Since then, some plaintiffs bringing trade secret-based RICO claims have struggled to satisfy RICO's pleading requirements, particularly the need to allege a continuous pattern of racketeering activity — an important element in these cases.

Nearly a decade after the DTSA's passage, few published appellate decisions have addressed RICO's pattern requirement where trade secret misappropriation is the sole predicate basis. However, on June 9, 2026, the Fifth Circuit added to the case law by examining whether involvement in other trade secret cases may support a RICO pattern.

In *EnvTech, Inc. v. DeBusk*, the appellate court held that the alleged theft of a trade secret could plausibly form part of a broader pattern of similar conduct. It also acknowledged that allegations from other lawsuits may be used to establish a RICO pattern, meaning that prior or parallel litigation may be used to demonstrate repeated misconduct and support broader racketeering claims.

*EnvTech* underscores that trade secret disputes may escalate into high-risk RICO exposure, increasing potential damages.

### Background on *EnvTech v. DeBusk*

The lawsuit noted that EnvTech, Inc. uses a proprietary one-step chemical formula and cleaning process for specialized refinery equipment used in fuel production and stated that the company held about 80% of the western market for cleaning that equipment.

Allegedly, the defendant, USA DeBusk (USAD) Chief Executive Officer Patrick DeBusk, hired two former EnvTech employees who knew the proprietary chemical blends EnvTech used in its cleaning formula. The plaintiff alleged that, following those hires, USAD developed a formula with ratios similar to EnvTech's and secured contracts with two of EnvTech's clients.

EnvTech filed suit against DeBusk, alleging RICO violations based on predicate acts of intentional theft of trade secrets, knowing receipt of trade secrets, and conspiracy to commit those offenses. The RICO statute prohibits participation in an enterprise engaged in a pattern of racketeering activity, which requires at least two related and continuous criminal acts, rather than isolated incidents.

In its complaint, EnvTech alleged that DeBusk directed the two former EnvTech employees to steal and use its confidential and proprietary cleaning process. The complaint also alleged that USAD declined to perform any testing or experimentation to verify the efficacy of its new cleaning process. EnvTech further relied on other, non-party lawsuits to argue that USAD engaged in a pattern of trade secret theft.

The district court dismissed the suit for failure to state a claim, finding that EnvTech had not sufficiently pleaded that DeBusk acted with the requisite mental state or established a pattern of racketeering activity.

On appeal, the Fifth Circuit reversed the trial court's ruling, holding that the alleged rarity of EnvTech's trade secret, DeBusk's oversight of USAD, his alleged role in securing contracts, and his alleged reliance on longtime former EnvTech employees supported a plausible inference that he acted with the required mental state.

As to RICO's pattern requirement, EnvTech alleged that four other lawsuits against USAD involved similar claims that DeBusk hired competitors' employees to improperly obtain trade secrets. The appellate court found these allegations sufficient at the pleading stage, noting that EnvTech could not be expected to plead detailed facts about other schemes without discovery. Finally, the Fifth Circuit held that the continuity requirement was satisfied because USAD allegedly showed no intent to change its hiring practices or use of alleged trade secrets.

### Key Takeaways

- **Damages exposure.** Trade secret remedies may include actual damages and unjust enrichment. If the misappropriation was willful and malicious, a plaintiff may also recover exemplary damages of up to twice the damages award and attorney's fees. By contrast, RICO claims can create greater exposure because prevailing plaintiffs are entitled to treble damages and attorney's fees without the same additional showing.
- **Single-victim doctrine.** Civil RICO claims are generally harder to sustain when the alleged misconduct targets only one plaintiff, because the plaintiff must plead more than repeated acts within a single transaction causing commercial injury. The plaintiff must allege a broader racketeering pattern that poses a threat of future repetition. Here, the Fifth Circuit found, among other things, that multiple lawsuits alleging similar conduct by USAD also supported a plausible inference that the alleged racketeering activity was likely to continue.

- **Broader discovery and litigation pressure.** Trade secret discovery often centers on the confidential information at issue, how it was obtained, and whether it was used. RICO allegations may expand discovery beyond the trade secret itself to encompass other transactions, alleged victims, related lawsuits, and business practices to establish a pattern of racketeering activity. That broader scope may increase litigation costs and settlement pressure, making pretrial motions important to narrow or dismiss the RICO theory before expensive pattern-related discovery begins.
- **Reputational harm.** RICO allegations may cause reputational harm because they suggest systemic criminal misconduct, rather than a typical trade secret dispute over the misuse of confidential information.
- **Joint and several liability.** Trade secret liability generally turns on each defendant's role in acquiring, disclosing, or using the trade secret. However, RICO allegations may create broader exposure for participants in the alleged enterprise, including potential joint and several liability for injuries caused by the racketeering activity.
- **Hiring from competitors may require careful safeguards.** Companies that recruit employees from competitors should consider confirming that they have strong policies and procedures in place to prevent the use or disclosure of confidential information (particularly when they have been accused of past misappropriation) and may wish to document the development process for competing products.

## Authors

This GT Alert was prepared by:

- **Kurt A. Kappes** | +1 916.868.0650 | [kappesk@gtlaw.com](mailto:kappesk@gtlaw.com)
- **Todd A. Pickles** | +1 916.868.0628 | [picklest@gtlaw.com](mailto:picklest@gtlaw.com)
- **Ryan Saffarian**<sup>~</sup> | Summer Associate | Sacramento

<sup>~</sup> Not admitted to the practice of law.

Abu Dhabi<sup>†</sup>. Albany. Amsterdam. Aspen. Atlanta. Austin. Berlin<sup>†</sup>. Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Dubai<sup>†</sup>. Fort Lauderdale. Houston. Las Vegas. London<sup>†</sup>. Long Island. Los Angeles. Mexico City<sup>†</sup>. Miami. Milan<sup>†</sup>. Minneapolis. Munich<sup>†</sup>. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Riyadh<sup>†</sup>. Sacramento. Salt Lake City. San Diego. San Francisco. São Paulo<sup>†</sup>. Seoul<sup>†</sup>. Shanghai. Silicon Valley. Singapore<sup>†</sup>. Tallahassee. Tampa. Tel Aviv<sup>†</sup>. Tokyo<sup>†</sup>. Warsaw<sup>†</sup>. Washington, D.C. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. <sup>†</sup>Greenberg Traurig's Abu Dhabi office is a branch of Greenberg Traurig, P.A., which is registered with the Abu Dhabi Global Market Registration Authority (Registration No. 29906) and licensed to carry out legal services and regulated as a DNFBP by the ADGM Financial Services Regulatory Authority. <sup>†</sup>Greenberg Traurig's Berlin and Munich offices are operated by Greenberg Traurig Germany, LLP, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>†</sup>Greenberg Traurig's Dubai office is operated by Greenberg Traurig Limited, a company registered in the Dubai International Financial Centre (Registration No. CL7238), regulated as a DNFBP by the Dubai Financial Services Authority and licensed by The Government of Dubai Legal Affairs Department. <sup>\*</sup>Operates as a separate UK registered legal entity. <sup>†</sup>Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>»</sup>Greenberg Traurig's Milan office is operated by Greenberg Traurig Studio Legal Associato, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>«</sup>Greenberg Traurig operates in the Kingdom of Saudi Arabia through Greenberg Traurig Khalid Al-Thebity Law Firm, a professional limited liability company, licensed to practice law by the Ministry of Justice. <sup>›</sup>Greenberg Traurig's São Paulo office is operated by Greenberg Traurig Brazil Consultores em Direito Estrangeiro – Direito Estadunidense, incorporated in Brazil as a foreign legal consulting firm. Attorneys in the São Paulo office do not practice Brazilian law. <sup>∞</sup>Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. <sup>†</sup>Greenberg Traurig's Singapore office is operated by Greenberg Traurig Singapore LLP which is licensed as a foreign law practice in Singapore. <sup>^</sup>Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. <sup>‡</sup>Greenberg Traurig's Tokyo*

*Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimubengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2026 Greenberg Traurig, LLP. All rights reserved.*