



When Trade Secret Theft Becomes Racketeering: What the Fifth Circuit's New Ruling Means

What You Need to Know

Key takeaway #1

The Fifth Circuit held that a pattern of targeting competitors' trade secrets can satisfy RICO's pattern requirement, opening the door to treble damages.

Key takeaway #2

Companies that systematically acquire competitors' proprietary information, including through hiring, may face RICO liability, not just trade secret claims.

Key takeaway #3

DTSA-based RICO cases are on the rise; over half of all federal decisions on the issue have been issued in the past three years; now is the time to assess your exposure on both sides.

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RICO was built for the mob. But Congress gave trade secret victims access to it in 2016, and a recent U.S. Court of Appeals for the Fifth Circuit decision shows that access is real.

The Decision

On June 9, 2026, the Fifth Circuit reversed a Texas federal district court's dismissal of a civil RICO suit in *EnvTech Inc. v. DeBusk*, No. 25-40237 (5th Cir. June 9, 2026), finding that EnvTech Inc. had made a plausible RICO claim against competitor USA DeBusk LLC (USAD) in the industrial cleaning services industry.

EnvTech alleged that a former minority owner left in 2012 to work for USAD, taking knowledge of its confidential chemical blends and methods, which EnvTech kept so closely guarded it did not even put them in writing. EnvTech also alleged that USAD obtained its proprietary cleaning process for hydrofluoric acid alkylation units in oil refineries, used it to generate potentially millions in revenue, and continued to do so even after EnvTech filed a prior state court lawsuit.

The Key Legal Issue: RICO's "Pattern" Requirement

To bring a viable RICO claim, a plaintiff must plausibly allege a “pattern” of racketeering activity: multiple related illegal acts taken continuously over an extended period or posing an ongoing threat. This has historically been the hardest element for trade secret plaintiffs to establish. Some courts have rejected arguments that each subsequent use of stolen trade secrets extends the pattern, reasoning that the criminal Defend Trade Secrets Act (DTSA) provisions cover copying, downloading, uploading, communicating, and possessing, but not “using,” stolen trade secrets.

The Fifth Circuit offered a more reliable path. Pointing to evidence that USAD had similarly targeted other competitors, the panel held that EnvTech’s allegations “support the inference that trade secret theft became USAD’s regular way of doing business during the relevant period, posing a threat of future repetition that is not abated by USAD’s apparently refraining from further acts.” Where a company systematically targets multiple competitors’ proprietary information and the conduct poses a realistic ongoing threat, the pattern requirement can be met.

Why RICO Matters in Trade Secret Cases

When Congress passed the DTSA in 2016, it added trade secret theft to the list of RICO predicate offenses, enabling civil suits for treble damages and attorney fees, what courts have called “the litigation equivalent of a thermonuclear device.” Despite that powerful remedy, only about 100 federal decisions mention both statutes, and only two prior federal appellate decisions addressed them before *EnvTech*. Over half of those decisions were issued in just the past three years. *EnvTech* will accelerate that trend.

What This Means for Your Business

If your company owns valuable trade secrets: A RICO claim may be worth pursuing alongside your DTSA claims if your proprietary information has been targeted as part of a broader scheme affecting multiple competitors. To build a viable pattern, document the specific acquisition acts — e.g., copying, downloading, uploading, communicating, and possessing — rather than focusing on downstream use.

If your company hires from competitors: Courts are often hostile to RICO cases that appear to be merely “trumped-up business disputes,” and *EnvTech* will not change that. But where the facts support a genuine pattern, those claims will survive. Robust trade secret intake procedures and onboarding protocols are both a litigation shield and a risk management imperative, particularly as noncompete agreements face mounting legal pressure and companies increasingly rely on trade secrets law as their primary tool for protecting proprietary information.

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