This is your Release #10 (June 2015)

Trade Secrets
A Practitioner’s Guide
Second Edition

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In this release, Professor Perritt updates and expands your text with new discussions of the law of trade secrets and related topics, including the following:

**Preemption:** In *Orca Communications Unlimited, LLC v. Noder*, the Arizona Supreme Court reversed the trial court and held that the Arizona Uniform Trade Secrets Act does not preempt common-law claims for misappropriation of confidential information that does not qualify as a trade secret. In *Kforce Inc. v. Oxenhandler*, a federal district court in Washington State found a variety of tort claims preempted by the UTSA and granted partial summary judgment. And in *Spitz v. Proven Winners North America, LLC*, the Seventh Circuit affirmed summary judgment for the defendant, finding that the Illinois UTSA preempted claims for quantum meruit and unjust enrichment. See § 1:5.4, at note 62.3.

**Trade dress:** Trade dress is a variant of trademark, and the Lanham Act permits suits for infringement of trade dress. Some key points about trade dress are set out in the Third Circuit’s *Fair Wind Sailing, Inc. v. Dempster*. See new § 2:7.3.

**Marketing information as trade secrets:** Certain PowerPoint presentations qualified as trade secrets in *Hallmark Cards, Inc. v. Monitor Clipper Partners, LLC*. Among other things, the defendant argued that information offered no competitive advantage, because the passage of four years from the creation of the material to its misappropriation rendered the information stale. Rejecting that argument, the Eighth Circuit affirmed judgment for the plaintiff. See § 3:9.3[A], at note 104.1.

**Fiduciary duty:** In *nClosures Inc. v. Block & Co.*, the Seventh Circuit affirmed summary judgment against the plaintiff, which claimed breach of a confidentiality agreement and breach of fiduciary obligations. The court analyzed in detail several alleged bases for a fiduciary duty based on a partnership arrangement, but found that no partnership had been formed under Illinois law. See § 6:5.4, at note 115.1.

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Inevitable disclosure: A federal district court in North Carolina assumed, without deciding, that that state would adopt the doctrine of inevitable disclosure, which enables a court to find that a former employee would likely disclose trade secrets, even if there is no actual evidence of disclosure. After stating eight factors to be considered, the court declined to find that the plaintiffs had made the necessary showing, and refused to grant their requested injunction. See § 6:6.4, at note 226.9.

Pleading in federal court: In ABB Turbo Systems AG v. TurboUSA, Inc., the Federal Circuit reversed dismissal of trade secrets misappropriation claims joined with a patent infringement suit. Applying Twombly and Iqbal, the court of appeals found that federal pleading standards had been satisfied with respect to plaintiff’s protection of the alleged trade secrets. See § 10:9, at note 293.1.

Preventing disclosure of trade secrets in non-trade-secret litigation: In Ex parte Robert Bosch LLC, the Alabama Supreme Court granted a writ of mandamus and held that a litigant in a personal injury action was entitled to broader protection from discovery of its trade secrets. See § 10:10.7, at note 480.6.

Cease-and-desist letters: In trade secret cases, as in many other intellectual property disputes, the first step is often the sending of a cease-and-desist letter. Front, Inc. v. Khalil, decided by the New York Court of Appeals, considered such a letter in the context of allegations that the letter defamed the plaintiff’s former employee by false accusations including misappropriation of trade secrets. See new § 11:8.

In addition, this release includes an updated Table of Authorities and Index.
Filing Instructions

Trade Secrets

Release #10
June 2015

<table>
<thead>
<tr>
<th>REMOVE OLD PAGES NUMBERED:</th>
<th>INSERT NEW PAGES NUMBERED:</th>
</tr>
</thead>
<tbody>
<tr>
<td>❑ Title page to 6-84</td>
<td>❑ Title page to 6-96</td>
</tr>
<tr>
<td>❑ 10-1 to 11-49</td>
<td>❑ 10-1 to 11-52</td>
</tr>
<tr>
<td>❑ T-1 to I-38</td>
<td>❑ T-1 to I-38</td>
</tr>
</tbody>
</table>