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How to Prevent Data Theft While Traveling Abroad: Trade Secrets Lawyer Advises GCs, Companies

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By Phillip Bantz

With the U.S.-China trade rivalries heightening awareness about protecting intellectual property, trade lawyers are increasingly being called on to help concerned clients keep their proprietary data under wraps.

One such lawyer is Eric Ostroff, an administrative partner at Meland Budwick, P.A. in Miami who advises stateside companies about what they can do to prevent trade secret theft while also preparing for a worst-case scenario.

Ostroff spoke with Corporate Counsel about safeguarding data when employees travel on business and what companies can do after a breach. The conversation has been edited for clarity and length.

Corporate Counsel: Has trade secret theft become more of a concern now in the current trade climate?

Eric Ostroff: There's no question that right now this is an extremely serious problem. The DOJ is very focused on this and the threat is real. This is not something that companies should assume will never happen to them. And it doesn't always just happen to the Fortune 500 companies. You can be a small player in an industry that China's very interested in and you can easily still get targeted.

So how do you help a U.S. company protect its trade secrets from an international competitor?

The times when I'm helping a company deal with foreign competitors is if,

for example, someone's traveling abroad. What are some of the precautions a company can take if an employee is traveling to particular areas or if you're in the particular industries that are high risk?

OK. Let's talk about those precautions.

It starts by understanding if your industry is likely to be targeted for trade secrets theft, particularly state-sponsored trade secrets theft. There are certain industries such as defense, biotech, a lot of the emerging technologies, high-end manufacturing, agriculture, that are particularly susceptible. If you're in one of those industries, it's worth giving some long thought about how you can protect the information when you're sending someone to a country like China, when we know there's a governmental effort to support theft of trade secrets from American companies.

In that situation, you want to make sure that you don't take your normal business computer abroad. Give the employee a totally brand new computer or a computer that has no proprietary information on it. And once you're abroad, don't use that computer to connect to the company's system. When you come back, that computer should never be connected to the company system unless it's given to IT first to make sure there's no malicious software that's been installed on there.

What are some other travel-related safety measures that you recommend to clients?

When someone's traveling abroad they need to be trained to be aware of seemingly innocent but what could be malicious attempts to gain information. There's something called elicitation, it's like a human version of spearphishing. Let's say you're going to an industry conference and someone will meet up with you and use efforts to try to innocently, supposedly, obtain information from you. You have to be aware at all times of anyone trying to get information.

All these issues are one's that our government is focused on. If you're in an industry that is a target for this kind of theft, I'd recommend that the company speak with its local FBI office, which will have a special agent that's dedicated to addressing this kind of theft.

Companies also turn to you after their trade secrets have been stolen. What do you do to help in that situation?

If it's a completely offshore company, it can be difficult to obtain any kind of relief here. But whenever this happens time is of the essence. And, hopefully, you've already been working with a lawyer who knows your industry. At the end of the day, a critical step is going to be trying to get an injunction to prohibit a defendant from using this information and the plaintiff's lawyer is
going to have to convince the judge why this information is so important to the plaintiff's company.

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