

From Innovation Shield to Competition Weapon. Strategic Use of Trade Secrets in Litigation

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Abstract

The present paper examines the strategic use of trade secrets litigation in the EU, drawing on the EUIPO's 2023 empirical study of 695 cases between 2017 and 2022. Even if Directive (EU) 2016/943 was intended to protect innovation and fair competition, the analysis reveals a recurring pattern of litigation aimed at market control, especially through the use of interim measures, combined claims of unfair competition, and proceedings against former employees: SMEs and large firms engage in such practices, often relying on vaguely defined commercial information. The absence of proportionality assessments, the underutilisation of art. 5 safeguards, and the lack of mechanisms capable to identify bad faith actions pose issues of systemic abuse, thus the paper calls for a recalibration of enforcement standards to preserve legal balance, ensure procedural fairness, and protect the Directive's pro-innovation purpose.

Keywords: trade secrets law, competition law, unfair competition; strategic enforcement; interim measures.