

Despite Civil Resolutions, Six Current and Former Fitbit Employees Face Federal Charges

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On June 14, a grand jury in the Northern District of California indicted five former and one current employee of Fitbit for receiving and possessing trade secrets stolen from their former employer, Jawbone—a Fitbit competitor. The indictment describes 14 categories of trade secrets at issue, ranging from market studies to pricing information to design specifications. This week, all six defendants pleaded not guilty.

These charges are particularly noteworthy because an International Trade Commission judge found that no Jawbone trade secrets had been misappropriated or used in a Fitbit product after a nine-day trial in 2016. Additionally, in December 2017, Jawbone and Fitbit settled civil claims that Jawbone had filed against Fitbit and five of the now-indicted employees.

Of note, each of the former Jawbone employees had signed a confidentiality agreement with Jawbone during the course of their employment, and Jawbone used secure, password-protected document repositories—facts that the U.S. Attorney’s Office likely will utilize to help demonstrate that the information at issue meets the definition of a “trade secret.”

TIP: If your company suspects trade secret theft, it should consider whether a criminal referral may be an appropriate and available remedy, particularly given the growing interest that many U.S. Attorney’s Offices have shown in prosecuting trade secret theft.

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