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## Meet Nancy Gray

In a diverse legal career that has spanned over three decades, attorney Nancy Gray has represented hundreds of clients in a variety of civil matters, including labor and employment (management/employee); sexual harassment, discrimination, wrongful termination; commercial, contract and business issues.



Among other highlights, Ms. Gray served as Assistant District Attorney in New York, spent seven years with a national law firm working on complex pharmaceutical and

## DOJ on the Case After DuPont Trade Secrets Illegally Sold to China

The cookie crumbled the wrong way for one Malaysian businessman when he tried to sell trade secrets to the



Chinese government for whiteners used in such things as Oreo cookies. DuPont Co. is suing a former consultant for damages resulting from misappropriation of trade secrets in the midst of a U.S. Department of Justice trial over the same trade secret theft.

In March, a federal jury in San Francisco found Walter Liew, the CEO of USA Performance Technologies and former consultant to E.I. Du Pont de Nemours and Company (DuPont), and Robert Meagerle, a former DuPont engineer, guilty of stealing trade secrets. Liew was convicted on 22 counts including trade secret theft, making false statements in

medical device cases, and successfully litigated and coordinated cases around the country. She has a unique expertise in matters pertaining to the adulteration of extra virgin olive oil.

Ms. Gray has also lectured and written on a variety of topics, including expert testimony, drug and medical device regulation, sexual harassment, employment practices and child performer issues.

In 1997, she started her own firm, based in Los Angeles.

Having been raised in New York City, Nancy enjoys dramatic, musical and comedy theater as well as pro sports. She is a PADI-certified scuba diver. Among her favorite reading material is Bon Appetit and anything pertaining to criminal behavior and behavioral profiling.

investigators, witness tampering, and economic espionage. Malaysian-born Liew, and his Chinese wife allegedly worked at the behest of the Chinese government, beginning in 1991.

Last month, Liew was sentenced to 17 years in federal prison for allegedly trying to sell the stolen trade secrets. Liew's wife has not yet been tried. Another DuPont employee involved in the case committed suicide before being charged.

The case stems from DuPont trade secrets for the manufacturing of titanium dioxide, a whitening agent. DuPont had long refused to license technology for the clean manufacture of titanium dioxide pigments. DuPont's process can be used for safely whitening a wide range of products including plastics and paper, as well as food products including the white filling used inside Oreo cookies.

Allegedly Liew worked through USA Performance Technology to obtain DuPont trade secrets, including blueprints for a DuPont manufacturing facility, DuPont's internal reports, and process-flow diagrams of DuPont plant equipment. Liew's company was then hired by the Pangang Group Co., controlled by the Chinese government, to help build a titanium dioxide manufacturing plant in China. In exchange, Liew's company received almost \$30 million.

This is just one of several recent victories for the federal government resulting from recent attempts by the United States to crack down on the theft and sale of U.S. intellectual property to the Chinese government. The Wall Street Journal quotes John Carlin, head of the Department of Justice's national security division, as

saying, "corporate espionage continues to grow and diversify in new areas including cyber...those who steal our intellectual property to benefit companies controlled by the People's Republic of China, or any other nation, can and will be held responsible for their actions."

While [Congress](#) has not yet authorized a private cause of action provision in federal law, several recent bills have proposed expanding the Economic Espionage Act of 1996 to do so. There have been recent debates on the subject in Congressional committees, and many major corporations have been [lobbying](#) on the Hill in support of a private right of action, particularly as foreign cyber theft becomes a growing concern for American companies.

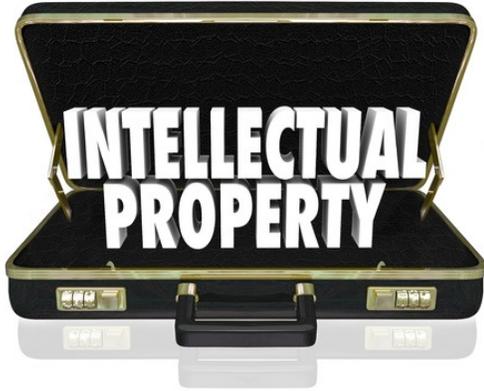
Even without a change in federal law to expressly allow for private actions under the Economic Espionage Act, companies can still seek recourse for trade secret theft as they would in any other civil matter. Last May, DuPont filed a federal trade secret civil action against Liew and Magerle in an attempt to recover [damages](#). The civil case is on hold as the criminal cases proceed.

If you need assistance with trade secret matters, Attorney Nancy Gray represents Southern California businesses and individuals in all aspects of business and employment law, including mediating and resolving trade secret issues, before they lead to costly, protracted litigation. Attorney Gray can help your business develop policies and best practices for human resources, and resolve potential labor and employment disputes arising from employee transitions. Put a committed, knowledgeable business

and employment attorney to work for your business today. Call Attorney Gray at (310) 452-1211 or visit Gray & Associates [online](#) for a free consultation.

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## ■ Protecting Your Company's Trade Secrets



Trade secrets are confidential pieces of a company's information that aren't protected through 'public' intellectual property like patents, trademarks, or copyrights. Many companies chose trade secrets as an alternative to patent protection. While a patent is enforceable for 20 years, if the company can keep it quiet, a trade secret can be protected indefinitely. One classic example of a trade secret is the

recipe for Coca-Cola. Trade secrets can include secret formulas, processes, software, experimental results, databases, methods, identities of customers, clients, suppliers, and vendors, blueprints, product formulations, engineering specifications for equipment, and the like.

The DuPont case offers a cautionary tale for businesses with trade secrets. Here are a few general tips on protecting your company's trade secrets:

**1. Do a yearly audit.** During this audit, evaluate all of the company's intellectual property, including confidential, proprietary and trade secret information, particularly the type of information that the company would not its competitors to gain access. The audit should reveal what trade secrets are most important to the company, what information is already in the public domain, and what might not need trade secret protection.

**2. Mark and store your confidential and proprietary information and trade secrets consistently.** Documents, files, and electronic data containing confidential and proprietary information and trade secrets should be marked confidential and stored with password protection. Develop labeling and storage policies, and use them consistently across the board. An example of labeling would be adding a marking in the top right corner of all confidential documents that says, "Contains Acme Corporation Confidential Information. Any Use or Disclosure is Prohibited Without Express Authorization." Keep in mind, however, that confidential labels should not be overused. Many companies learn the hard way

during the document discovery phase of litigation that the courts tend to have little sympathy for protecting a company's confidential information when it labels every document it produces—from catering menus in the company dining hall to a staff memo about repainting the lines in the parking lot—as confidential.

**3. Do annual trade secret training for relevant employees.** This should include, at a minimum, the results of the audit identifying all relevant trade secrets, the trade secret marking policies, record keeping and storage policies, and reviewing the company's non-disclosure agreement terms.

**4. Use Non-Disclosure Agreements.** Require all employees to sign Non-Disclosure Agreements (NDAs) if they have not already signed an employment agreement that contains a clause protecting confidential, proprietary and trade secret information. These NDAs should restrict the employee from disclosing trade secret information during and after employment at the company ends. The NDA should state very specific legal recourse for the company if an employee breaches the agreement. The NDA should also set out clear policies for an exiting employee to return trade secret information, company documents, computer files, and the like.

**5. Consider access for your contractors and visitors.** Plenty of companies have inadvertently disclosed trade secrets during factory tours, service visits by customers, vendors, or repair people, or in discussions with contractors, vendors, or even potential employees. Some companies require everyone entering the premises to sign an NDA, while others only allow outsiders into secure areas of the facility. Consider your company's trade secrets, and develop policies and procedures on how you will deal with outsiders on site. Then implement those procedures every time. Depending on the nature of the discussions, potential contractors and vendors should be required to sign an NDA even before talks begin.

**6. Keep an eye out for theft.** Companies that work in the international marketplace should routinely consult the USDOJ's website for more information on international trade secret theft. The Chinese government, among other foreign governments, is actively attempting to acquire trade secrets, particularly those related to manufacturing, petrochemicals, food processing, and others. If you suspect theft of trade secrets, do not hesitate to contact law enforcement authorities.

If you need assistance with trade secret matters, Attorney Nancy Gray represents Southern California businesses and individuals in all aspects of labor and employment law, including mediating and resolving trade secret issues, before they lead to costly, protracted litigation. Attorney Gray can help your business develop policies and best practices for human resources, and resolve potential labor and employment disputes

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## About Gray & Associates P.C.

Attorney Nancy Gray of Gray & Associates, P.C. has more than 30 years of experience providing personalized attention and creative solutions to her clients' legal issues. Whether you need a strong litigator, a labor and employment advocate, or a savvy business law attorney, you can rely on Gray & Associates to provide you with excellent legal representation. Click [here](#) to read more.

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