

# Trade Secret Misappropriations Accusations Are Not Proof of a Habit

Article By:

Intellectual Property Practice Group

---

Finding that evidence of a prior accusation of trade secret theft was more prejudicial than probative, the **U.S. Court of Appeals for the Sixth Circuit** excluded, from a criminal trial, evidence of prior accusations of trade secret theft against two engineers. ***U.S. v. Qin, et al.***, Case No. 12-1015, (7th Cir., July 20, 2012) (Donald, C. J.).

In 2010, Yu Qin and his wife Shanshan Du were indicted for possessing **stolen trade secrets**. From 1985 to 2005, Qin was an electrical engineer at Controlled Power Company (CPC) and, at the time of his termination in 2005 held the position of vice president of engineering and research and development. Du also worked at CPC until some time in 2000. After leaving CPC in 2000, Du started working at **General Motors (GM)** as an engineer in its **Advanced Technology Vehicles Group**. During their respective employments at CPC and GM, both Qin and Du agreed to protect the confidential information of their respective employers.

In January 2005, Du's supervisor at GM offered Du a severance package in return for her resignation. Du accepted the offer in March 2005 and certified that she had returned all GM records and materials in her possession. She also acknowledged her employment obligation not to disclose confidential information. In the summer of that same year, CPC's vice president of operations became suspicious that Qin was engaging in additional outside activities. After some research, it was discovered that since 2000 Qin owned and operated a business known as Millennium Technologies International (MTI) that operated in direct competition with CPC. After CPC confronted Qin about his operation of MTI, CPC employees discovered a bag containing a large quantity of electrical components belonging to CPC and a hard drive that contained thousands of confidential files and intellectual property copied from GM by Du prior to the end of her employment.

The United States government charged Qin and his wife with conspiring to obtain trade secrets from GM pertaining to motor controls for hybrid vehicles. None of the charges against Qin and his wife related to Qin's possession of confidential information belonging to CPC. CPC initiated a separate civil lawsuit asserting several causes of action, none of which related to the theft of CPC trade secrets.

Prior to trial the government provided Qin and Du's counsel with notice of its intent to offer at the GM trade secret trial evidence that Qin appropriated resources of CPC for the benefit of MTI. Qin and Du

filed a motion to exclude the evidence, arguing that introducing those allegations in a criminal trial would be more prejudicial than probative, particularly as to Du, to whom CPC did not attribute any of the underlying conduct forming the basis of CPC's civil complaint. After the district court granted Qin and Du's motion to exclude the evidence, an interlocutory appeal followed.

In reviewing the admissibility of prior bad acts, the 6th Circuit employs a three-step process for determining the admissibility of the evidence: 1) whether there is sufficient evidence that the other act in question actually occurred, 2) whether the evidence of the other act is probative of a material issue other than character, 3) if the evidence is probative of a material issue other than character, whether the probative value of the evidence is substantially outweighed by its potential prejudicial effect. Reviewing the first factor, the 6th Circuit reasoned that while the government contends its proof would be straightforward, Qin would have every incentive to refute the government's allegations with proof of his own. Accordingly, given the parties' positions, the 6th Circuit found the evidence could reasonably support a finding on both sides of the issue. However, for the purposes of the appeal, they assumed without deciding that there was sufficient evidence to support a jury finding that Qin appropriated CPC resources for the benefit of MTI.

Moving to the second step, the 6th Circuit reviewed whether the evidence was probative of a material issue other than character. The government purported to offer the evidence to show Qin and Du's specific intent, participation in a common scheme or plan, and absence of mistake or accident. Accepting the government's stated purpose, the 6th Circuit turned to the central issue, whether evidence of Qin's alleged misappropriation of CPC information is probative of Qin and Du's specific intent to steal trade secrets from GM. The 6th Circuit determined that it might be possible to generalize Qin's conduct in a way as to make it sound similar to the conduct that forms the subject of the indictment (*i.e.*, that Qin stealing from CPC is substantially similar to Qin and Du stealing from GM), but that the two situations were fundamentally different. The 6th Circuit therefore affirmed the district court's determination that the acts were not substantially similar, and that in addition to lacking probative value, the evidence would be highly prejudicial to Qin and Du and should be excluded.

© 2025 McDermott Will & Emery

---

National Law Review, Volume II, Number 257

Source URL: <https://natlawreview.com/article/trade-secret-misappropriations-accusations-are-not-proof-habit>