



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Wu-Tang Trade Secret Ruling Hints At New Way To Protect Art

By **Theresa Schliep**

Law360 (September 30, 2025, 9:45 PM EDT) -- A New York federal judge caused a splash last week when she ruled that a one-of-a-kind Wu-Tang Clan album can constitute a trade secret, and attorneys say the surprising decision could broaden the scope of trade secret protections to cover artistic works.

U.S. District Judge Pamela K. Chen's **order Thursday** kept in place claims by PleasrDAO, an art-collecting crypto community, that disgraced pharmaceutical executive and the former owner of the Wu-Tang album, Martin Shkreli, misappropriated the trade secret of the music by playing it on internet livestreams and sharing downloads of it with others, among other conduct. The agreement that came with the music highly restricted how it could be used.

Judge Chen herself acknowledged the novelty of her decision, saying "it cannot be understated that the application of trade secret doctrine to the unique facts of this case is uncharted territory." But PleasrDAO has made a plausible enough case for the claim to go forward, the judge said.

Trade secret experts agreed with Judge Chen's assessment of her ruling as unusual.

"This is the first time a federal judge or anybody, as far as I know, has recognized a musical work as a trade secret," Jason M. Bradford, a Jenner & Block LLP partner, told Law360. "And it takes trade secret protections beyond the traditional notions of business information to encompass unique cultural assets, where the value in that asset is derived from its exclusivity."

And although the facts of the case are highly specific — it's not every day that artists sell their music for millions of dollars and severely restrict access to the work — Bradford and others said the decision suggests that owners of exclusive artistic assets can think about using trade secret protections to supplement those provided by copyright and other types of intellectual property.

"I think the court is giving artists license to say, 'Hey, if you limit your distribution of a particular musical work and you charge a lot of money for it, you could potentially have trade secret protection in addition to copyright protection,'" according to Darius C. Gambino, a Saul Ewing LLP partner.

Even without the novel application of trade secrets law, the case has attracted the attention of corporate attorneys due to the players involved: a cryptocurrency outfit, the hip-hop group famous for hits like "C.R.E.A.M." and Shkreli, who was accused of hiking the price of a life-saving antiparasitic drug and was then convicted of securities fraud. He was released from prison in May 2022.

Shkreli purchased the work in 2015 for \$2 million. The album, "Once Upon a Time in Shaolin," has 31 tracks and was intended to serve as a statement on the nature of the modern music business and the "devaluation of music in the digital era," according to Judge Chen's order.

The purchase was codified in an original purchase agreement that restricted Shkreli's use of the album for 88 years, prohibiting him from duplicating the work or using it for commercial purposes. But after Shkreli was convicted of securities fraud, he lost the album to forfeiture. It was eventually purchased by PleasrDAO for \$4.75 million.

Shkreli, however, wasn't done with the album, according to PleasrDAO's complaint, which notes that

he's played the album for audiences on streaming and has claimed that he still possesses the music. He's stated that "thousands of people" have listened to the album through him, and Shkreli at one point hosted a video session on X where nearly 5,000 people tuned in to listen to the album, according to the complaint.

PleasrDAO brought its lawsuit in 2024, claiming, among other things, trade secret misappropriation and violations of the federal Defend Trade Secrets Act. Shkreli requested dismissal of the whole action, and while Judge Chen's Thursday order partially granted that motion, such as by dismissing PleasrDAO's request for enforcement of the forfeiture order, she preserved the trade secrets claims.

Judge Chen looked at the six Integrated Cash factors, named for the 1990 Second Circuit decision *Integrated Cash Management Services Inc. v. Digital Transactions Inc.* Those factors generally look at how secret certain information is, the efforts to keep that information secret and the value of the information.

The judge answered those questions largely in PleasrDAO's favor, saying that the music generally is not known to the public at large and that PleasrDAO has taken numerous efforts to keep the music secret, including moving the album by secure transport. Moreover, it's reasonable to find that the album is valuable to PleasrDAO because of its secrecy, and Judge Chen highlighted this factor as especially important.

She came to this conclusion despite other courts declining to find that other musical works, such as unreleased Prince and Janet Jackson music, could constitute trade secrets. PleasrDAO's business model of setting out to create "ecosystem experiences" using "culturally significant media and materials" means that it derives economic value out of its secrecy, the judge said.

"The independent economic value of the album comes from plaintiff's ability to exploit its exclusivity to create an 'experience' that its competitors cannot, rather than from a public commercial release or from traditional forms of music distribution," the order said.

Judge Chen repeatedly acknowledged that the case presents "unique facts" and noted that trade secrets protections typically apply to business information like customer lists or, in a canonical example, the secret formula for Coca-Cola. Whether the album is a trade secret is ultimately an issue of fact, the judge said.

But some attorneys said what Wu-Tang Clan did, intentionally or not, could be replicated by other artists or in other industries.

The decision indicates that there's a "potential market where exclusivity-based business models can receive trade secret protection if they have the proper contractual and security measures in place," Jenner & Block's Bradford told Law360. He suggested that trade secret protections could, under the right circumstances, apply in a similar way to designer sketches or video games.

"A video game publisher could sell off or auction unreleased levels of a hit video game and say, 'You can create a limited number of copies of these, we'll sell you some of the copyright interest as well, and you can have parties with your friends where you play copies of this game, but you can't copy it beyond that,'" Bradford said.

To be sure, the unique fact pattern of the PleasrDAO case indicates that it might not be an easy case to replicate. Saul Ewing's Gambino highlighted Judge Chen's acknowledgment that courts came to different conclusions in the Janet Jackson and Prince cases, and the attorney said the case was a "perfect storm" of circumstances that led to the trade secret finding.

"I'm not aware of any artists that have tried to replicate that business model," Gambino said. "But I think this decision gives artists the impetus to think about that as a business model, especially with the way the distribution of music has changed over the past 15 years."

David L. Pardue of Pierson Ferdinand LLP, an IP attorney who is a self-described Wu-Tang fan, likewise noted the group is "doing something no one else has done before."

"But could someone else do something like that and discover that is a different way to monetize

[their] art? I think they can," Pardue said, adding that the decision tells artists "you might not just have to rely on copyright law as a protection; you have other things that you might be able to do with your art and the way that it's expressed and experienced."

Above all, though, Bradford and Pardue said it seems like Judge Chen's order actually proves Wu-Tang's point in making the album.

"They're saying, 'We are criticizing the current market for published music, so we're going to create a piece of art that has certain restrictions on it that really limit who will get to hear this piece of art,'" Bradford said. "And the court endorses what Wu-Tang Clan was trying to do in creating this art and says, 'You're absolutely right. This artwork you created is deriving its value from that exclusive nature.'"

Steven Cooper of Reed Smith LLP, representing PleasrDAO in the case, said in a statement that the "judge wrote a thorough and well-considered decision, and we are pleased that we will be able to fully and aggressively proceed with our case against Mr. Shkreli."

For its part, Shkreli's counsel, Edward Andrew Paltzik of Taylor Dykema PLLC, said in a statement: "Eliminating half of PleasrDAO's case prior to discovery is a significant step forward in our effort to vindicate Mr. Shkreli, who we unequivocally believe to have engaged in absolutely zero wrongdoing."

PleasrDAO is represented by Steven Cooper, Zachary Kaye and Robert Carnes of Reed Smith LLP.

Shkreli is represented by Edward A. Paltzik, Erik Dykema and Meredith Lloyd of Taylor Dykema PLLC and Serge Krimnus of Bochner PLLC.

The case is PleasrDAO v. Shkreli, case number 1:24-cv-04126, in the U.S. District Court for the Eastern District of New York.

--Additional reporting by Aislinn Keely. Editing by Michael Watanabe.

All Content © 2003-2025, Portfolio Media, Inc.