

Trade Secret Protection for Music? Wu-Tang's Once Upon a Time in Shaolin Could Open New Doors for Monetizing Art

October 20, 2025 – The TMCA

by Julia Lisi



In a recent ruling, U.S. District Judge Pamela K. Chen opened a new realm of possibilities for trade secret protection. Judge Chen's order acknowledges that, at least in very rare circumstances, an album of music, even one that has been sold, can in fact be a trade secret under federal and New York law.

The case revolves around the sole hard copy of Wu-Tang Clan's album, *Once Upon a Time in Shaolin*, the most expensive musical work ever sold. It is a

dispute between the current owner of the album, plaintiff, PleasrDAO, and the former owner of the album, defendant Martin Shkreli. Via his social media posts, Mr. Shkreli claims to have made digital copies of the album, which he then (allegedly) played online for his followers and distributed to third parties. PleasrDAO sued Mr. Shkreli for trade secret misappropriation, among other claims. Judge Chen's order rules on Mr. Shkreli's motion to dismiss PleasrDAO's claims.

Trade secret protection is generally reserved for business information such as internal customer lists, formulas, and algorithms. The Defend Against Trade Secrets Act (DTSA) defines trade secrets as "all forms and types of business . . . information," provided (i) the owner took reasonable steps to maintain the information's secrecy, and (ii) the owner gets some independent economic value from the information's secrecy. In her order, Judge Chen acknowledges that Wu-Tang's album is not the type of information generally protected by trade secrets. Nevertheless, Judge Chen ruled PleasrDAO had in fact plausibly alleged the album was a secret.

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Judge Chen's order illustrates how artists might add another layer of protection—trade secrets—for limited edition or one-of-a-kind works. For example, ownership Wu-Tang's album comes with robust contractual restrictions, in an effort to maintain the album's secrecy and one-of-a-kind nature. The album owner can only reproduce the album for personal use. Reproducing or distributing the album for other purposes is prohibited, except for limited circumstances like museum exhibitions. Other traditional methods of protection, such as PleasrDAO's secure transport and storage of the album, helped the plaintiff's case.

The order acknowledges that trade secret protection for music is uncharted territory. PleasrDAO's case might be unique enough that it cannot be recreated. For example, PleasrDAO was perfectly positioned to derive economic benefits from the album, *as a trade secret*, because PleasrDAO did not plan on, and was prohibited from, selling the album to the general public. Instead, PleasrDAO is a collector of "culturally significant media," which it displays in an effort to create "ecosystem experiences." As amorphous as an ecosystem might be, it is a far cry from publishing the album on Apple Music or Spotify, for the world to stream.

Just like Wu-Tang's album, Judge Chen's order might be one-of-a-kind. The case is still pending, with the parties set to brief on whether producers, Robert Diggs and Tarik Azzougarh, should be joined as parties. Only time will tell whether *Once Upon a Time in Shaolin*'s trade secret protections can be replicated for other works of art, even if, the album itself cannot.