

TRADE SECRET LITIGATION – AN UPDATED OVERVIEW

Journal of the Missouri Bar

William M. Corrigan, Jr., and Jeffrey Schultz, CIPP/US

Introduction

Trade secret litigation often involves “high stakes” or “bet-the-business” cases. For example, in July 2014, the 8th Circuit Court of Appeals affirmed a jury verdict totaling more than \$31 million in actual and punitive damages for misappropriation of trade secrets. In 2007, in another case involving the misappropriation of trade secrets, the 8th Circuit affirmed a jury verdict totaling more than \$2 million in actual and punitive damages. And as far back as 2004, the 8th Circuit upheld an award of punitive damages in another trade secrets case, which it remitted to \$7 million. Because trade secrets have tremendous value to businesses, the protections provided by the Missouri Uniform Trade Secrets Act (MUTSA) can be critical to one’s clients.

Missouri Uniform Trade Secrets Act

A. Overview

Although trade secrets are an important category of intellectual property, their treatment under the law differs from other familiar types of intellectual property. Unlike patent law, which predicates protection on novelty and non-obviousness, trade secret laws focus on the secrecy and value of information and “are meant to govern commercial ethics.” Accordingly, “[t]rade secret protection does not shield an idea from ‘infringing’ other uses of the idea; instead it protects valuable information from being misappropriated despite reasonable efforts to keep it secret.”

In addition, unlike patents, copyrights and trademarks, which are protected by federal law, trade secret rights generally are protected by the laws of each individual state. The National Conference of Commissioners on Uniform State Laws adopted the Uniform Trade Secrets Act in 1979, codifying the principles of common law trade secret protection. Since then, 47 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands have adopted some form of the act. Missouri adopted its version of the act – the MUTSA – in 1995.

Since its adoption, the MUTSA has proved to be a valuable addition to Missouri businesses’ arsenal for protecting their competitively sensitive information. The pervasive use of mobile computing and data storage devices and the increasing ease with which information can be copied, stored and disclosed (whether

PEOPLE

Jeffrey Schultz, CIPP/US

SERVICES AND INDUSTRIES

Litigation

Noncompete and Trade Secrets



Armstrong
Teasdale

intentionally or inadvertently) has made trade secret misappropriation more common. The MUTSA's flexible remedial provisions make it an especially effective tool for protecting easily misappropriated electronic information. The MUTSA provides remedies for misappropriation and threatened misappropriation of a company's trade secrets, including but not limited to theft by employees who may not be subject to a non-compete agreement. Pursuant to the MUTSA, a plaintiff may be entitled to compensatory damages, punitive damages, and/or injunctive relief if the plaintiff can prove actual or threatened misappropriation of a trade secret by the defendant.

Read more...[Journal of The Missouri Bar](#)