2025 Trade Secrets End of Year Report

Trade Secrets, Noncompetes & Employee Mobility

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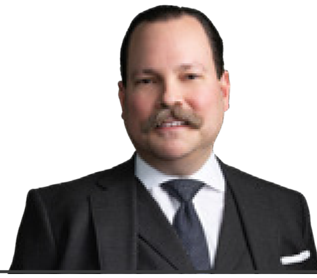
AUTHORS

Linda M. Jackson
Partner and Complex Litigation Practice Co-Leader, DC
202.775.5785
linda.jackson@afslaw.com



Matthew F. Prewitt
Partner, CHI
312.258.5583
matthew.prewitt@afslaw.com

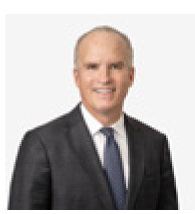
Lauren C. Schaefer
Partner, BOS
617.973.6120
lauren.schaefer@afslaw.com

Pascal Naples
Senior Associate, DC
202.715.8569
pascal.naples@afslaw.com

John M. Hindley
Associate, DC
202.350.3621
john.hindley@afslaw.com

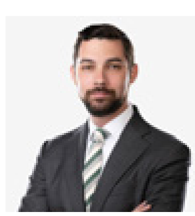
Contributors

Allan E. Anderson
Partner, LA
213.443.7683
allan.anderson@afslaw.com



Taniel E. Anderson
Partner, DC
202.857.6320
taniel.anderson@afslaw.com

Andrew Baskin
Partner, DC
202.350.3772
andrew.baskin@afslaw.com



Robert K. Carrol
Partner, SF
415.805.7973
robert.carrol@afslaw.com

Contributors

Adam Diederich
Partner, CHI
312.258.5686
adam.diederich@afslaw.com

Ehsun Forghany
Partner, SF
415.805.7986
ehsun.forghany@afslaw.com

Michael K. Molzberger
Partner, CHI
312.258.5871
michael.molzberger@afslaw.com

Nicholas J. Nesgos
Partner, BOS
617.973.6168
nicholas.nesgos@afslaw.com

Nadia Patel
Partner, DC
202.775.5716
nadia.patel@afslaw.com

Alexandra M. Romero
Partner, DC
202.828.3469
alexandra.romero@afslaw.com

Alexander H. Spiegler
Partner, NY
212.457.5454
alexander.spiegler@afslaw.com

Michael L. Stevens
Partner, DC
202.857.6382
michael.stevens@afslaw.com

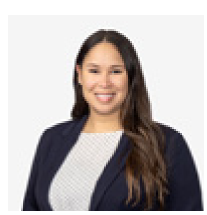
Howard J. Susser
Partner, BOS
617.973.6119
howard.susser@afslaw.com

Laura Zell
Partner, DC
202.857.6032
laura.zell@afslaw.com

Zoe E. Bonsky
Associate, CHI
312.258.4523
zoe.bonsky@afslaw.com

Nicholas L. Collins
Associate, NY
212.457.5430
nicholas.collins@afslaw.com

James D. Cromley
Associate, CHI
312.258.5616
james.cromley@afslaw.com



Nicole Curtis Martinez
Associate, DC
202.350.3614
nicole.curtis@afslaw.com

Contributors

Oscar A. Figueroa
Senior Associate, LA
213.443.7525
oscar.figueroa@afslaw.com

Meghan F. Hart
Associate, DC
202.350.3599
meghan.hart@afslaw.com

Trevor M. Jorgensen
Senior Associate, CHI
312.258.5621
trevor.jorgensen@afslaw.com

Roberto Martinez
Associate, CHI
312.258.5569
roberto.martinez@afslaw.com

Stella T. Oyalabu
Senior Associate, CHI
312.258.5534
stella.oyalabu@afslaw.com

Bella Seeberg
Associate, CHI
312.258.5542
bella.seeberg@afslaw.com

Rebekkah R.N. Stoeckler
Associate, DC
202.857.6118
rebekkah.stoeckler@afslaw.com

Brittany Trinidad
Associate, LA
213.988.6675
brittany.trinidad@afslaw.com

Mariam C. Weber
Senior Associate, CHI
312.258.5613
mariam.weber@afslaw.com

Oluwaseun (Shay) Wells
Senior Associate, DC
202.857.6237
seun.wells@afslaw.com

EXECUTIVE SUMMARY

Executive Summary

As we look back on 2025 and ahead to 2026 for our firm's annual survey, we report that, while 2025 marked an important turning point, we expect continuing efforts to reshape the law of trade secrets and noncompetes. The clearest takeaway is that the Federal Trade Commission's (FTC) attempt to impose a nationwide ban on employee noncompete agreements has failed for the foreseeable future, but regulatory and judicial scrutiny continues, and state legislative reform remains active. Federal attention has shifted to targeted enforcement, with healthcare as a priority sector and with case-specific actions emerging in other industries. States continued to legislate actively, tightening noncompete rules through compensation thresholds and healthcare carveouts; but outliers remain, with some new legislation even loosening restrictions.

In parallel, trade secret litigation has intensified, with outsized verdicts and consequential appellate guidance on damages and the timing and specificity of trade secret identification. Technological catalysts, especially artificial intelligence (AI) and complex data center collaborations, are also amplifying risk and compliance demands. In short, 2026 will require tailored, industry- and jurisdiction-specific strategies with sharper corporate governance on trade secret issues.

Continuing Federal Enforcement Despite the FTC Rule's Demise

The nationwide noncompete ban put forward by the FTC in 2024 was judicially vacated. The agency, under new leadership in 2025, abandoned its appeal before the Fifth Circuit, ending its pursuit of the sweeping rulemaking. The enforcement posture, however, remains.

In February 2025, for example, the FTC launched a Joint Labor Task Force whose stated mission is "to prioritize rooting out and prosecuting deceptive, unfair, and anticompetitive labor-market practices that harm American workers." This effort includes a focus on "no-poach, nonsolicitation, or no-hire agreements," as well as "noncompete agreements."

The FTC also has continued to litigate matters on a case-by-case approach, with particular emphasis on healthcare markets where it asserts restrictions can constrain patient access and labor mobility. The FTC issued warning letters to large healthcare employers and staffing firms to audit their restrictive covenants and pursued an enforcement action against the nation's largest pet cremation business (which allegedly used sweeping, one-year, nationwide noncompetes across all employee levels).

The practical implication is recalibration and deterrence under existing, familiar standards rather than eliminating restrictive covenants entirely. As always, agreements that are disproportionate in duration, geography, or scope — or that reach workers with limited access to sensitive assets — are more likely to invite regulatory scrutiny. Employers should continue to expect the FTC to examine the real-world competitive impact of restraints, to question uniform templates that are not tailored to roles or legitimate interests, and to test alternative protections that avoid post-employment market-wide bans. Although no federal agency has attempted to invalidate a covenant that would be enforceable under governing state law, the FTC's targeted actions elevate compliance risk for companies that rely on broad, legacy restrictions, especially in sectors with heightened regulatory or consumer welfare sensitivities.

Restrictions Expand in Many States, But Divergence Remains

State legislative activity in 2025 produced a more fragmented landscape, albeit with a stronger tilt toward worker mobility. Thirteen states enacted or significantly amended restrictive covenant statutes, with two themes apparent.[1]

First, many jurisdictions adopted or amended compensation thresholds that bar or sharply limit noncompetes for lower-wage or nonexempt workers, with several pegging thresholds to inflation or local wage indices that will adjust automatically in early 2026. Second, health care-specific limitations accelerated, with multiple states banning or tightly regulating physician and medical worker noncompetes and some imposing caps on duration and geographic scope or requiring patient notification upon provider departures.

In some jurisdictions, blue-penciling restrictive covenants remains an available path to revive an otherwise non-enforceable noncompete, but courts are increasingly unwilling to revive overbroad noncompete provisions. The Delaware Chancery Court, for example, explicitly declined to blue-pencil noncompete provisions in two instances this year, emphasizing its discretionary authority and the need for equality in bargaining power and noncompetes that were actually negotiated.

Furthermore, a small group of jurisdictions[2] maintain near-total bans on employee noncompetes, with narrow exceptions for executives or sales of businesses. A growing number of states[3] have codified public policy limits that complicate the enforceability of out-of-state, choice-of-law and forum clauses.

But outliers to restricting noncompetes remain. Florida is the most prominent, authorizing long-duration, garden leave and post-employment noncompetes for highly compensated, Florida-based workers and mandating injunctive relief if statutory conditions for an enforceable noncompete are met. Florida's statutory expansion raises hard questions for multistate employers about cross-border enforceability, public policy exceptions, and the treatment of remote or hybrid workforces.

Trade Secret Litigation: Intensification Continues with Large Jury Verdicts and Consequential Appellate Decisions

Trade secret litigation intensified again in 2025. Juries issued large damages awards (many of which subsequently were reduced), and appellate courts addressed consequential questions that will shape litigation strategy in 2026. The large verdicts and subsequent reversal or reduction of some of those verdicts indicate the current volatility of litigation in this space. For example, in *Rex v. Intuitive*, the Federal Circuit affirmed a decision by the Delaware District Court to reduce a jury award from $10 million to $1, excluding the testimony of the plaintiff's damages expert because he failed to apportion the value of the patent-in-suit from the plaintiff's other licensed patents. In *Insulet Corp. v. EOFlow*, the Massachusetts federal district court reduced a $452 million jury award regarding medical device

[1] These newly enacted state-law noncompete restrictions can be found in the Appendix below.
[2] Those states are California, Minnesota, North Dakota, Oklahoma, and Wyoming.
[3] Those states are Colorado, Louisiana, and Massachusetts.

technology to $59.4 million based on the scope of injunctive relief.

In Virginia, the intermediate Court of Appeals overturned a $2 billion jury verdict in *Pegasystems Inc. v. Appian Corp.*, though the Supreme Court of Virginia has granted review of that decision, with the state's high court poised to address, among other issues, whether a defendant must disprove the causal link between the sales for which the plaintiff seeks disgorgement and the alleged misappropriation or whether the finder of fact can presume, in the absence of evidence to the contrary, that all of the sales for which the plaintiff seeks disgorgement were proximately caused by the alleged misappropriation.

Finally, a Federal Circuit decision vacated a $14 million award in *Mondis Technology Ltd. v. LG Electronics Inc.*, concluding that the plaintiff's definitions of its trade secrets were insufficiently particularized or not actually secret. Collectively, these outcomes push litigants toward earlier precision, closer alignment between remedies and evidentiary proof, and more disciplined damages methodologies.

A separate, yet critical, line of cases focuses on the timing and specificity of trade secret identification. Decisions diverged on whether early, "reasonable particularity" identification is required under the Defend Trade Secrets Act (DTSA), with the Fourth Circuit (in *Sysco Machinery Corp. v. DCS USA Corp*.) affirming dismissal at the pleadings stage for insufficient identification, while the Ninth Circuit (in *Quintara Biosciences Inc. v. Ruifeng Biztech Inc.*) rejected early-stage specificity mandates, reserving the issue for later in the case. Meanwhile, a Federal Circuit ruling in *Coda Development SRO v. Goodyear Tire & Rubber*, which affirmed the reversal of a $64 million jury verdict, emphasized that plaintiffs must identify their trade secrets with particularity during discovery and may not rely on late supplementation to cure deficiencies. These decisions will influence forum selection, pleading strategies, discovery planning, and the calibration of protective orders and interrogatory practice. They also arguably raise the bar on pre-suit preparation, documentation, and internal governance around what, precisely, businesses consider to be trade secrets and what they need to do to ensure trade secret protection.

We also expect more courts to confirm DTSA's extraterritorial reach. In 2024, the Seventh Circuit (in *Motorola Solutions, Inc. v. Hytera Communications Corp. Ltd.*) held that DTSA has an extraterritorial reach so long as "an act in furtherance" of misappropriation was committed in the United States. This year we saw a court (in *GTY Technology Holdings Inc v. Wonderware, Inc.*) conclude that a plaintiff sufficiently alleged a DTSA claim where the misappropriation took place outside the United States because the plaintiff's former employees and the foreign defendant met in Chicago, Illinois, to conspire to take the plaintiff's trade secret information. However, another court (in *Whaleco Inc. v. Shein Tech. LLC*) dismissed a DTSA claim because the plaintiff pleaded no plausible facts to infer that any act in furtherance of the defendant's misappropriation took place in the United States.

Technology Frontiers: AI and Data Center Collaborations

The expansion of AI and the corresponding growth in data centers are magnifying familiar trade secret issues and creating new ones. Disputes, like *OpenEvidence Inc. v. Doximity Inc.*, in the Massachusetts federal district court, are already testing whether prompting large language models (LLMs) to elicit system behaviors or outputs that expose confidential logic constitute permissible reverse engineering or unlawful misappropriation.

Other questions also emerge.

– To what extent do AI training or deployment practices risk waiving trade secret protection if protective measures are not robust and consistently enforced?

– How do projects at the intersection of AI and data center growth, which often involve joint development, accelerated timelines, and large-scale compilation and processing of data, respond to a legal climate accustomed to traditional trade secret hygiene?

– What are the ownership boundaries around compilations?

– What are the rules for information exchange?

– How must one label and track confidentiality designations?

– What are the proper exit mechanics for codeveloped assets?

These questions establish recurring pressure points that may alter the traditional paradigms of trade secret law in the coming years.

2026 Watchlist and Practical Expectations

These converging trends warn of a structural shift in compliance and risk management.

At the federal level, the FTC's targeted enforcement approach is likely to produce additional actions in certain industries and challenge oppressively restrictive covenants that attempt to bind lower-wage roles or rely on broad-scale boilerplate definitions. Thus, regulated and labor-constrained sectors — especially health care — should assume heightened federal attention and maintain response plans for inquiry letters, contract remediation, and other remedial undertakings.

Several state legislatures[4] are poised to continue introducing or refining compensation thresholds, healthcare carveouts, notice requirements, and fee-shifting provisions, with automatic threshold adjustments taking effect early in the year in several jurisdictions. Other legislatures, like in Florida, invite conflict-of-laws contests that will play out in cross-border workforces and remote arrangements, given the broad statutory scope of permissible noncompetes.

This means employment agreement portfolios should be audited (and, as needed, rebuilt) on a jurisdiction-by-jurisdiction basis, with role-specific tailoring that ties any restraint to a legitimate business interest and a defensible duration and scope. Wage and compensation thresholds should be monitored annually where they adjust automatically by statute, and healthcare-facing provisions

[4] Such bills are being considered in Illinois, Washington, and New York as of January 2026.

should be capped, disclosed, and aligned with patient access obligations where required by state law.

Appellate courts are likely to clarify at least some important issues. This could include the proper burden of proof allocation for damages and causation. Courts may also grapple with the divergence in federal precedent as to the timing and specificity required for identification of alleged misappropriation of a trade secret. And they may continue to police the overlap between money remedies and injunctions, trimming awards where an injunction provides an adequate remedy against future financial harm.

However, 2025 already has shown that trade secret programs benefit from precision. Businesses should formalize identification protocols that map specific secrets to business use cases, assign custodians, and document reasonable measures to maintain secrecy comprehensively. Litigation readiness requires early articulation of the secrets at issue, disciplined disclosure practices, and damages models that distinguish between past enrichment from future misconduct barred by the court.

On the technology front, AI-related disputes will test the line between acceptable probing of systems and misappropriation, while collaborations in data-centric infrastructure will drive case-by-case applications of ownership and secrecy doctrines. AI-intensive workflows demand reinforced access controls, auditable guardrails for model interaction, and internal policies that preempt claims of inadequate secrecy.

Across these fronts, the common denominator is discipline: tight industry- and jurisdiction-specific corporate governance and precise investigation and preparation before commencing litigation.

The following table summarizes the final takeaways:

2025 Developments and 2026 Outlook

Domain	2025 Key Developments	2026 Expectations
Federal Enforcement	Nationwide FTC ban judicially vacated; shift to targeted, case-by-case actions; health care warning letters; enforcement beyond health care in outlier industries.	Continued selective actions, with health care priority; scrutiny of broad, non-tailored restraints; emphasis on real-world competitive effects.
State Legislation	Thirteen states enacted or tightened rules (e.g., expanded compensation thresholds, health care carveouts, near-total bans); while Florida *broadened* enforceability for highly compensated workers.	More threshold updates to state noncompete laws; passage of additional health care-focused limits; continued divergence between states with or without noncompete limits; conflict-of-laws tests involving Florida and other employer-protective forums.
Litigation and Remedies	Large verdicts with post-trial reductions; confirmation of DTSA extraterritorial reach;	Appellate guidance on damages causation and apportionment; further refinement of identification standards;

	federal circuit split on timing and specificity of trade secret identification in litigation; emphasis on avoiding overlap between damages and injunctions.	closer linkage between remedies and proof.
Technology Issues	AI disputes over prompt-based exposure and reverse-engineering analogues; data center collaborations raising ownership and secrecy questions.	More AI-centric claims; governance scrutiny for access, secrecy, and documentation; collaboration agreements tested for allocation and exit.

Conclusion

The record from 2025 points to a new normal, defined by targeted federal enforcement, state-level divergence, heightened judicial demands on trade secret precision, and increased activity related to artificial intelligence. Rather than nationwide templates, employers and innovators will need calibrated, industry- and state-specific contracts; clear and consistently enforced trade secret programs; and litigation strategies that anticipate appellate expectations on identification, protection, damages, and remedies.

The growth of AI and data-center collaborations intensify these demands by multiplying access points and complicating ownership and confidentiality boundaries. Although the potential for a sweeping national ban on noncompetes has receded, the overall risk environment for continued reliance on noncompetes is not gone; rather, it has shifted to granular enforcement and proof. As such, there should be continued focus on the ability to rely on other mechanisms — such as trade secret enforcement and nondisclosure protocols — to mitigate the risk of competitive harm. Enterprises that simplify their agreements, are diligent in the governance of proprietary information, and align their remedies with demonstrable harms will be best positioned to navigate 2026’s scrutiny across courts, agencies, and jurisdictions.

APPENDIX – State Noncompete Restrictions Enacted in 2025

State	Statute	Description
Arkansas	Ark. Code § 4-75-101	The statute bans noncompete agreements for physicians and "voids" those that are in effect at the time of enactment. It defines "physician" as any person authorized or licensed to practice medicine under the Arkansas Medical Practice Act.
Colorado	Colo. Stat. § 8-2-113	• Expands Colorado's ban on noncompetes to highly compensated licensed health care workers, to include those practicing medicine and dentistry, midwives, and those engaged in advanced registered nursing. • Removes the provision that allowed companies to recover damages for noncompete violations by departing physicians. • Allows physicians to communicate with patients about their new professional contact information at their new practice. • Narrows business sale noncompetes to only owners of business interest and limits noncompetes for minority owners.
Illinois	820 Ill. Comp. Stat. 90/10	Bans noncompetes and nonsolicitation agreements for (1) mental health professionals who provide mental health services to veterans and first responders if the agreement is likely to result in an increase in cost or difficulty for any veteran or first responder seeking mental health services; and (2) certain construction workers, regardless of whether they are part of a union.
Indiana	Ind. Code § 25-22.5-5.5-1.4	Noncompetes entered into on or after July 1, 2025, between physicians and a hospital or a hospital-related entity are void and unenforceable. The statute also explicitly defines "noncompete agreement" and clarifies that nondisclosure agreements, nonsolicitation agreements, and noncompetes related to the sale of a business are not included in the definition.
Louisiana	La. Stat. § 23:921	Prohibits noncompetes for primary care physicians that exceed three years and for any other physicians that exceed five years.
Maryland	Md. Lab. & Empl. Code § 3-7166	Voids noncompetes signed after July 1, 2025, that restrict certain health care workers making less than $350,000 in total annual compensation from working for a new employer or becoming self-employed in a similar business or trade. Noncompetes for health care workers that make more than $350,000 are restricted to one year in duration and a geographic scope not to exceed 10 miles from their primary place of employment.

Montana	Mont. Code § 28-2-724	Expands noncompete and nonsolicitation ban to naturopathic physicians, registered and advanced practice nurses, and physician assistants. On January 1, 2026, the state expanded the ban to all licensed physicians except those tied to contracts connected with the sale or purchase of a practice.
Oregon	Or. Stat. § 653.295	Voids noncompete, nondisclosure, and non-disparagement agreements for doctors and other licensed medical providers. Oregon's law has exemptions: • Permits restrictive covenants between medical licensees and employers if the licensee owns a share of 1.5% or greater in the employer. • Permits restrictive covenants for medical licensees who do not provide clinical care or other medical services. • Permits restrictive covenants where employers make a "recruitment investment" that amounts to 20% or more of an employee's first-year salary.
Pennsylvania	35 Pa. Stat. § 10324	Starting on January 1, 2025, any restrictive covenant between an employer and health care practitioner "which has the effect of impeding the ability of the health care practitioner to continue treating patients or accepting new patients" is void and unenforceable. The statute, however, permits restrictive covenants that are no more than one year and where the health care practitioner was "not dismissed by the employer."
Texas	Tex. Bus. & Corp. Code §§ 15.50, 15.52	Expands the state's noncompete restrictions to include "health care practitioners," not just physicians. Permits noncompetes with a licensed physician only if it contains certain duration limits, contains geographic limits, includes a buyout requirement, and is in writing. Moreover, noncompetes cannot be enforced if a physician is terminated without "good cause."
Utah	Utah Code § 58-90-101	Prohibits "health care services platforms" from requiring a health care worker to enter a noncompete.
Virginia	Va. Code § 40.1-28.7:8	Amends definition of "low wage employee" to include those who are eligible for overtime pay under the Fair Labor Standards Act, i.e., "nonexempt" employees. Virginia prohibits noncompetes for "low wage employees."
Wyoming	Wyo. Stat. § 1-23-108	Voids most noncompetes entered into on or after July 1, 2025. The statute still permits noncompetes connected with the sale or purchase of a business, agreements to protect trade secrets, agreements to recover training and relocation expenses, and noncompetes for executives and management personnel. The statute also voids all noncompetes with physicians.

FIRST CIRCUIT

First Circuit

***Cynosure, LLC v. Reveal Lasers LLC*, 2025 WL 2254165 (D. Mass. Aug. 7, 2025).**

INDUSTRY

Health Care, Life Sciences

TAKEAWAY

Even if it can be shown a former employee breached an employment agreement by retaining confidential information in joining a new employer, the employee will not be found liable for trade secret misappropriation unless it can be proved that the information amounted to a trade secret or that they had misappropriated any trade secrets.

DETAILS

Procedural Posture: The plaintiff's motion for entry of judgment for violation of Massachusetts General Laws Chapter 93A

Factual Background: The plaintiff, Cynosure, LLC (Cyno), is a medical aesthetic device company based in Massachusetts. It sells lasers that remove tattoos, treat skin laxity, wrinkles, birthmarks, and other uses. The defendant, Reveal Lasers LLC, is an Israeli company that also sells medical aesthetic devices. Reveal began efforts to establish a US presence in early 2021. To do so, it convinced Cyno's senior regional director of sales at the time, the defendant Robert Daley, to come on as Reveal's chief executive officer (CEO) for the United States. Daley agreed and began to work with Reveal to develop a strategy for competing in the United States. Daley recruited Cyno's vice president (VP) of sales for North America, defendant Chris Chambers, to become Reveal's chief commercial officer, and together they initiated a plan to build out a sales and marketing team with top personnel from Cyno. They recruited about 26 Cyno sales and marketing employees to Reveal that assumed similar roles in similar regions. Notably, Daley and Chambers were both still employed by Cyno at this time.

Prior to resigning from Cyno, both Baley and Chambers used Cyno's confidential information to help Reveal establish its US business and to recruit sales and marketing personnel. The employees that they recruited similarly took confidential information from Cyno with them to use as employees of Reveal. Collectively, Baley, Chambers, and several other employees took thousands of documents from Cyno, including electronic files, screenshots, and hardcopies. These documents included customer leads, a presentation about a new product that had not been released to market, Cyno financials, pricing lists, prospective customer lists, and analyses comparing Cyno's devices to those of its competitors. Much of this confidential information was used in their positions at Reveal.

Cyno sued Reveal, Baley, Chambers, and several other former employees who left Cyno to join Reveal. Cyno sued for misappropriation of trade secrets under federal and state law, civil conspiracy, tortious interference with contract and prospective business relations, and violation of Massachusetts General Laws Chapter 93A. Cyno was able to secure temporary restraining orders

(TROs) that barred the defendants from further disclosing confidential information, required the preservation and return of Cyno's stolen confidential information, and forbade the defendants from soliciting Cyno's clients and employees. The case was tried resulting in the jury awarding compensatory damages to Cyno as well as punitive damages. Although the jury found that Reveal and Daley were liable for trade secret misappropriation, the jury found that the misappropriation did not cause Cyno any harm and did not award damages on those claims. The court granted Chambers a directed verdict on the trade secret misappropriation claims. After trial, Cyno moved for judgment against Reveal, Daley, and Chambers for violation of Chapter 93A in part for their misappropriation of trade secrets.

Court's Decision: The principal trade secret dispute at issue was whether trade secret misappropriation under federal and state law can constitute a violation of Chapter 93A.

In analyzing this question, the court ruled as follows:

1. The court found that Chambers did not commit an unfair trade practice by misappropriating Cyno's trade secrets. At trial, it was revealed that Chambers returned a company laptop to Cyno but he had reset it to factory settings resulting in deletion of all files and data in the laptop. This prevented Cyno from proving that he had trade secret information in the laptop that was disclosed and used to benefit Reveal. The court explained that Chambers was granted a directed verdict on Cyno's trade secret misappropriation claims at trial because it was not proven that Chambers had Cyno's trade secret information on his company laptop or that he had misappropriated any trade secrets for the same reason.
2. The court found that Reveal and Daley violated Chapter 93A because they were found liable for trade secret misappropriation under state and federal law at trial. Daley asserted the intra-enterprise doctrine as a defense arguing that he could not have violated Chapter 93A because the trade secret information he used was acquired during the time he was employed by Cyno. The court rejected that argument because the intra-enterprise doctrine does not apply when the information collected during employment is used to launch a competing endeavor like Daley did with Reveal.

Reveal and Daley also argued that they could not be found liable for violation of Chapter 93A because the unfair acts purportedly did not occur in Massachusetts. The court rejected this argument because the unfair trade practices took place primarily and substantially in Massachusetts. Cyno was based in Massachusetts, many of its employees that were poached by Reveal were in Massachusetts, and much of the harm Cyno suffered occurred in Massachusetts as well. The court found that Cyno was able to identify significant wrongful conduct taking place in Massachusetts.

***Iatric Systems Inc. v. Hamilton Health Sciences Corp.*, 2025 WL 2260276, No. 24-cv-13116-NMG (D. Mass. Jul. 7, 2025).**

INDUSTRY

Health Care

TAKEAWAY

Allegations that a licensee of proprietary software has granted access to the software to non-customers does not by itself establish misappropriation of a trade secret. A plaintiff alleging trade secret misappropriation must identify with particularity what commercially valuable and secret information has been misappropriated or accessed.

DETAILS

Procedural Posture: Magistrate judge's report and recommendation on the defendant's motion to dismiss.

Factual Background: The plaintiff licensed software to monitor and audit access to medical records (called Haystack) to the defendant, a health care system. The plaintiff alleged that the defendant gave access to Haystack to entities outside of its facilities in violation of the licensing agreement. The plaintiff sued, alleging among other claims, misappropriation of trade secrets under the DTSA, the Massachusetts Uniform Trade Secrets Act (MUTSA), and Massachusetts common law.

Court's Decision: The magistrate judge recommended dismissal of the plaintiff's trade secret claims for failure to adequately identify any claimed trade secret. The plaintiff claimed that "certain aspects" of Haystack, including "coding and related documentation," constituted a protected trade secret. The court faulted the plaintiff for failing to offer "factual allegations that anyone accessed any secret information—as opposed to simply using a program that [Plaintiff] licensed commercially." Further, the court explained that while a trade secret may be described rather than disclosed at the pleading stage, "[m]erely stating that the claimed secret is some portion of the software and documentation does not elucidate which portions of the software or documentation were kept secret (and are valuable because of that secrecy)."

***Insulet Corp. v. EOFlow Co., Ltd.*, 779 F. Supp. 3d 124 (D. Mass. 2025) (Appeal Pending).**

INDUSTRY

Health Care

TAKEAWAY

A permanent injunction may include equitable relief such as reassignment of existing patents and patent applications derived from misappropriated trade secrets, as well as auditing rights to ensure compliance with the injunction, but that equitable relief may require a reduction in money damages.

DETAILS

Procedural Posture: The plaintiff's motion for permanent injunction and preservation of damages award.

The plaintiff moved to preserve its damages award and for permanent injunction requesting that (1) the defendants be prohibited from using any product containing the plaintiff's trade secrets; (2) reassignment of certain of the defendants' patents that use the misappropriated trade secrets to the plaintiff; and (3) the plaintiff have audit rights to ensure the defendant's ongoing compliance with the injunction order.

The defendants moved for a stay of an injunction and damages pending appeal.

Factual Background: The plaintiff, Insulet Corporation, designed and manufactured an insulin patch pump, the Omnipod. The plaintiff sued a competitor and its CEO under the DTSA for misappropriation of trade secrets for the pump's design and manufacture. Following a month-long trial, a jury found for the plaintiff, awarding it $452 million in damages ($170 million in unjust-enrichment damages and $282 million in exemplary damages for willful and malicious misappropriation of trade secrets).

Court's Decision: The court held that the plaintiff's request for a permanent, worldwide injunction was warranted, as was its request for an equitable reassignment of the defendant's patents derived from misappropriated trade secrets and audit rights. The court, however, reduced the compensatory and exemplary damages awards to avoid double recovery for the plaintiff under the permanent injunction.

First, the court held that the plaintiff satisfied a four-factor test that warranted a permanent injunction. In key part, the plaintiff proved that it would face irreparable harm in the absence of an injunction because the defendants could undermine the value of the plaintiff's proprietary information by freely selling or distributing products incorporating the plaintiff's trade secrets. A worldwide, permanent injunction was also proper under the circumstances because the defendants had tried to sell the trade secrets to a foreign competitor, and it was unlikely the defendants could independently develop a similar product without use of the plaintiff's trade secrets.

Second, the court held that equitable reassignment of the defendants' existing patent and any patent application derived from the plaintiff's trade secrets was appropriate to prevent the defendants' continued misuse of the trade secrets or improper reward for their misappropriation.

Third, the court held that the plaintiff's request to conduct audits up to two times per year per defendant to ensure compliance with the injunction order was warranted. The court reasoned that the audit provisions of the injunction order were justified by the jury's finding that individual defendants engaged in willful and malicious misappropriation of the plaintiff's trade secrets.

Lastly, the court reduced the $452 million verdict to $59.4 million. The court reasoned that because the jury's damages award calculation was partially based on the defendants' future, unrealized gains, it would overlap with the permanent injunction and a failure to reduce money damages would result in a double recovery for the plaintiff. The court fashioned a damages remedy accounting for the defendants having avoided costs in research and development from misappropriation of the plaintiff's trade secrets.

On the defendants' motion to stay the injunction and damages award, the court granted a partial stay that permitted the defendant company to continue to sell its products to existing patients in foreign markets (the European Union and Republic of Korea) to avoid sudden interruption to those patients and to permit the defendant company to have a revenue source during the pendency of the appeal process.

***KPM Analytics N. Am. Corp. v. Blue Sun Sci., LLC*, 729 F. Supp. 3d 84, 115 (D. Mass. 2024), Judgment Entered, No. 21-CV-10572-MRG, 2025 WL 438735 (D. Mass. Feb. 7, 2025).**

INDUSTRY

Construction, Private Companies, Manufacturing

TAKEAWAY

A Massachusetts federal court, when determining whether individuals or entities acted "willfully and maliciously" under the DTSA and MUTSA for purposes of assessing exemplary damages, followed the "intent to cause injury or harm" approach, which the Fourth Circuit has noted is the majority approach.

DETAILS

Procedural Posture: The plaintiff's post-trial motion for a finding of willful and malicious trade secret misappropriation and exemplary damages.

Factual Background: KPM Analytics manufactures near infrared (NIR) analyzers, a device used to determine the chemical composition of substances in consumer products. KPM alleged that a former employee conspired with its competitor, Blue Sun Scientific, to steal trade secrets related to the NIR analyzers, including its proprietary software, calibration datasets, and customer information. The former employee solicited various KPM employees to secretly work for both companies simultaneously and used pseudonymous email accounts and other means to conceal their activities and divert business away from KPM. After a nine-day trial, a jury found mostly in favor of KPM.

Court's Decision: The court held that Blue Sun Scientific and various individual defendants willfully and maliciously misappropriated KPM's trade secrets.

The court stated that both the federal DTSA and MUTSA were based on the same model statute, the Uniform Trade Secrets Act (UTSA), and contain specific provisions for exemplary damages when the defendants acted "willfully" and "maliciously." Neither statute defined "willful" or "malice," leading to confusion amongst the courts on the proper legal standard.

The court looked at other jurisdictions and found that courts generally understood "willfully" to mean "done with actual or constructive knowledge of its probably consequences," but diverged on the definition of "malice." The court found two approaches: (1) The majority approach adopted the "intent to cause injury or harm" standard and (2) the minority approach adopted a "conscious disregard for the rights of another" standard. The court held that it would apply the intent to cause injury or harm standard, citing a leading treatise on trade secrets and the Fourth Circuit's decision in *Steves & Sons, Inc. v. JELD-WEN, Inc.*, 988 F.3d 690 (4th Cir. 2021).

Applying the "intent to cause injury or harm" standard to each of the defendants, the court found that Blue Sun willfully and maliciously misappropriated KPM's trade secrets. It focused on Blue Sun's concealment of the real names of KPM-affiliated individuals as evidence of its willful conduct, and its misrepresentations to customers regarding KPM's business and diversion of KPM customers as evidence of its malicious conduct.

The court also found that each individual defendant acted "willfully and maliciously" in misappropriating trade secrets. The court pointed to evidence specific to each defendant demonstrating their awareness that their conduct misappropriated KPM's trade secrets, and evidence demonstrating their intent to diverge existing KPM customers to Blue Sun.

The court held that while each defendant acted "willfully and maliciously," only the defendant entity and two individuals would be assessed exemplary damages under the DTSA or MUTSA. The remaining defendants were already found liable for punitive damages by the jury, and as such, the court held that exemplary damages would not have further deterred their future conduct.

***Walgreen Co. v. Haseotes*, 778 F. Supp. 3d 264 (D. Mass. 2025).**

INDUSTRY

Real Estate, Construction, Private Companies

TAKEAWAY

Trade secret misappropriation does not require direct access from the plaintiff trade secret owner; it broadly includes disclosure or use of another's trade secret by someone who had knowledge or reason to know that the trade secret was obtained through improper means or acquired by someone who had a duty to maintain the secrecy of such trade secret**.**

DETAILS

Procedural Posture: The defendants' motion to dismiss for failure to state a claim.

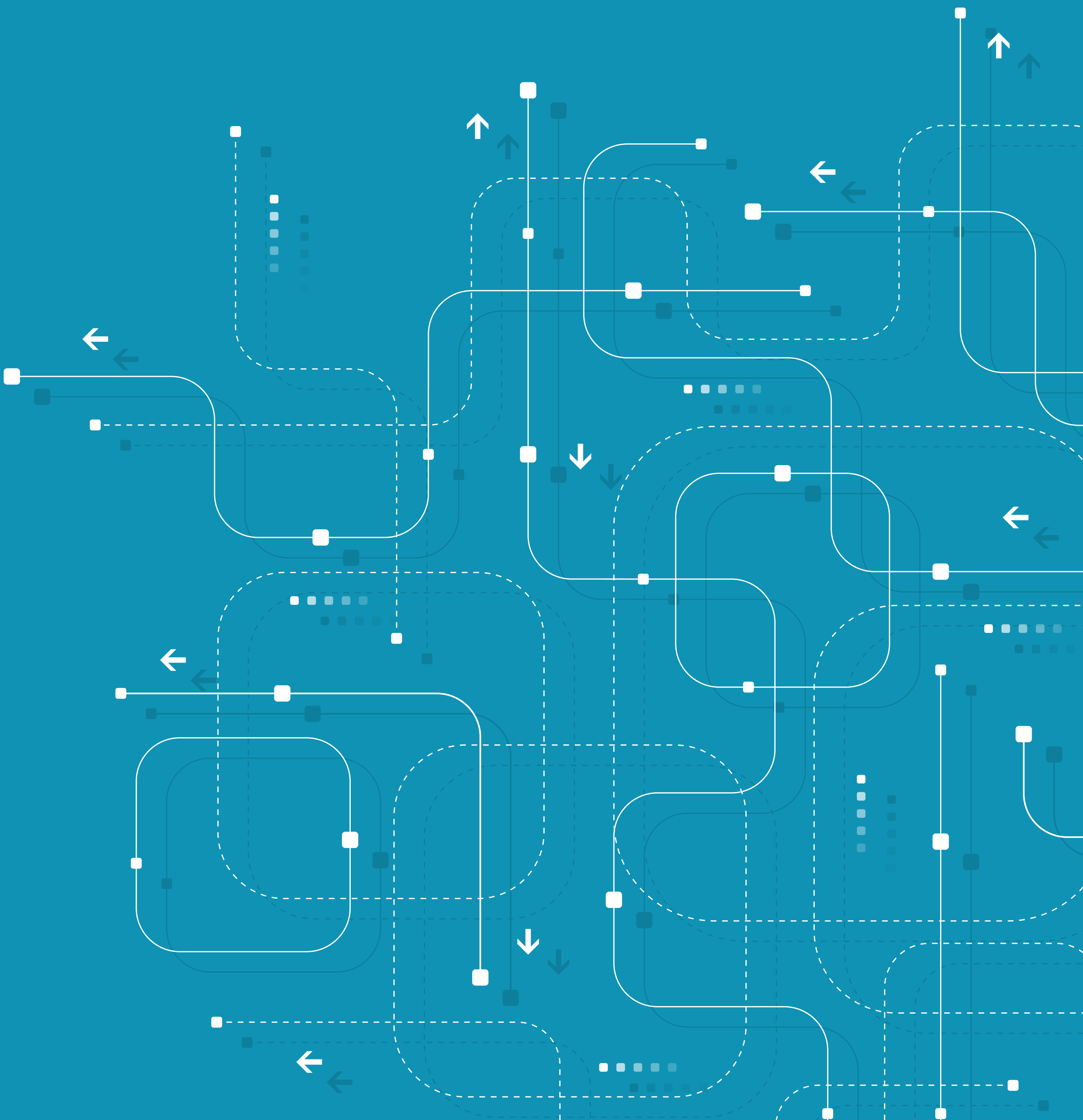
Factual Background: Walgreens owns and leases properties nationwide for its pharmacies and includes in their leases a right of first refusal (ROFR) for Walgreens to buy the property if put on the market. Walgreens alleged it maintained protectable trade secrets in its business process used to assess and make recommendations as to its nationwide properties, including whether to exercise its ROFR. Peters, a former employee of Walgreens, joined L2 Partners, LLC, a real estate company that buys commercial properties such as Walgreens pharmacies. Peters surreptitiously downloaded extensive Walgreens files, including materials relating to Walgreen's trade secret business processes, and exposed them to L2 in order to unfairly compete with Walgreens. These tactics included creating falsely inflated third-party offers for properties subject to Walgreen's ROFR so that

Walgreens would pass, while the actual buyer would receive a partial refund of the inflated price. The complaint alleges that L2 made deals with the defendants, two brothers engaged in real estate investing transactions, which involved sharing Walgreens' proprietary confidential information in exchange for a fee, which allowed the defendants to obtain commercially valuable properties using Walgreens' analyses, but for which Walgreens would not exercise its ROFR. Walgreens brought action against the defendant real estate investors for misappropriation of trade secrets under the DTSA and MUTSA, and several other torts. The defendants moved to dismiss for failure to state a claim.

Court's Decision: The court found that the asserted compilation of information comprised protectable trade secrets, which included for each location the total sales, itemized prescriptions sales, profit margins, operating expenses, and adjusted operating income. Walgreens also demonstrated reasonable measure of secrecy. Under both the DTSA and MUTSA, it also must be shown that the defendants used improper means, in breach of a confidential relationship, to acquire and use the trade secrets. The complaint alleged the defendants obtained Walgreens' trade secrets from Peters and L2, not from Walgreens directly. However, the court noted that under Massachusetts trade secret law, a third party who knowingly benefits from a trade secret, which a person in a confidential relationship obtained from the plaintiff, is liable to the plaintiff for the misappropriation of that trade secret. The court also held that such third-party access sufficed as pleaded under the DTSA, which statutorily implies that a defendant can be liable for inducing a third party to disclose confidential information in breach of a confidential relationship, and otherwise has language consistent with the Massachusetts statute.

Walgreens alleged that the defendants knew or had reason to know that the data in Walgreens' material was misappropriated due to the defendants' sophisticated experience in real estate transactions with L2 — transactions that were specifically for Walgreens properties. In this way, the defendants knew or should have known that the information was not publicly available information and contained illegally obtained data. Based thereon, the court found Walgreens had proffered sufficient facts to state a plausible claim that the defendants had misappropriated trade secrets under both the DTSA and MUTSA.

SECOND CIRCUIT



Second Circuit

***GHP Media, Inc. v. Hughes*, No. X03-CV-17-6185527-S, 2025 WL 2709368 (Conn. Super. Ct. Sep. 19, 2025).**

INDUSTRY

Media & Entertainment

TAKEAWAY

GHP Media highlights how plaintiffs in Connecticut are limited in their theories of recovery against employees who steal company information for the benefit of a competitor. This is because the state's highest court has interpreted the Connecticut Uniform Trade Secrets Act (CUSTA) as broadly preempting non-trade-secret-related claims that are premised on misappropriation. If a plaintiff plans on bringing both a CUTSA claim and a separate tort claim, its non-CUTSA claim must be premised on bad acts unrelated to trade secret misappropriation.

DETAILS

Procedural Posture: Motion for summary judgment.

Factual Background: The defendant, Tanya Hughes, began working for Integrity Graphics in 1997 and became a salesperson in 2012. As part of her employment, she signed a document acknowledging that she had a duty to maintain confidentiality of client and company information.

On July 7, 2017, the plaintiff GHP Media, Inc. purchased all the assets of Integrity. Hughes stayed with GHP as a sales consultant and signed another document acknowledging her duty to maintain confidentiality.

On July 17, 2017, while still employed by GHP, Hughes became an employee of the defendant TigerPress, a direct competitor of GHP. On the same day, she quoted a job to one of GHP's clients both on behalf of GHP *and* TigerPress. The next day, Hughes requested that a GHP customer service representative, Jennifer Wallace, send her a list of GHP customers that included sales revenue and profit. Hughes then printed that list and met with Reza Shafii, the president of TigerPress, to discuss the prospect that those customers would follow her to TigerPress. A day later, Hughes resigned from GHP, but not before forwarding to her TigerPress email address a list of work requests from GHP's clients. While employed by TigerPress, she followed up on these work requests on behalf of TigerPress.

Hughes also took all of her GHP customer files to her home. She then brought those files to TigerPress and used them to solicit GHP's customers. Wallace also left GHP to join TigerPress, bringing additional GHP's customer files with her. Shafii knew that Hughes brought GHP's customer files to TigerPress. In fact, once Hughes and Wallace explained the nature of the information in the customer files, he instructed them to use the information to solicit customers and price jobs.

Among the documents stolen from GHP were "commission calculators" that reflected the methodology used by Integrity to price jobs, including labor and material costs, markups, commissions, and sell prices. TigerPress, at Shafii's direction, adopted the Integrity pricing methodology, installed the commission calculator on its own computers, and used it to price jobs. Shafii instructed Hughes and Wallace to set prices at or below the Integrity prices to solicit the plaintiff's customers to TigerPress.

Based on the above events, GHP sued and brought several state-law claims for violation of the CUTSA. In addition, GHP brought claims for tortious interference with contract and with business expectancies, violation of the Connecticut Unfair Trade Practices Act, computer offenses, conversion, and civil theft.

Court's Decision: *GHP Media* is one of the first cases to address CUTSA preemption since the Connecticut Supreme Court's decision in *Dur-A-Flex, Inc. v. Dy*, 321 A.3d 295 (Conn. 2024). Contrary to the position adopted in certain other states, in *Dur-A-Flex*, the Connecticut Supreme Court interpreted the state's uniform trade secrets statute to broadly preempt all state law causes of action "based on the acquisition, disclosure, or use of confidential information that does not rise to the level of a trade secret." The court held in *Dur-A-Flex* that a "noncontractual claim based on the misappropriation of commercial information by a former employee must be brought under CUTSA or not at all." In other words, if the factual allegations that support a plaintiff's trade secrets claim also support another claim (e.g., breach of the duty of loyalty, tortious interference with contract), then that claim is preempted by CUTSA.

The court found that the wrongful conduct alleged by GHP in support of all its causes of action against TigerPress and Shafii was almost entirely predicated on the misappropriation of trade secrets or commercially valuable information. In other words, absent proof of TigerPress' and Shafii's misappropriation, GHP's non-CUTSA claims would fail. Accordingly, the court concluded that most of GHP's non-CUTSA claims against TigerPress and Shafii were preempted.

But not all of GHP's non-CUTSA claims against Hughes were preempted. Under the statute, disloyal conduct on the part of a *current* employee remains actionable even if it involves the misappropriation of confidential business information. In other words, CUTSA preemption does not "foreclose actions in which the misuse of confidential information may be implicated but is not the wrong actually being alleged."

GHP had brought a breach of duty of loyalty claim against the defendants concerning Hughes' alleged efforts to divert opportunities from GHP to TigerPress while she was employed at GHP. The duty of loyalty claim against Hughes was not preempted by CUTSA because it was not entirely based on the misappropriation of trade secrets or commercially valuable information. The court dismissed the duty of loyalty claim against TigerPress and Shafii, however, because they did not owe a duty of loyalty to GHP. As to the other non-CUTSA claims against Hughes, the statute preempted those claims as well because they were almost entirely based on Hughes' alleged misappropriation.

In the end, the court denied the defendants' motion with respect to Hughes' CUTSA claim because there were genuine disputes of material fact.

***AutoExpo Ent., Inc. v. Elyahou*, No. 23-CV-09249 (OEM) (ST), 2025 WL 2637493 (E.D.N.Y. Sep. 12, 2025).**

INDUSTRY

Transportation & Mobility, Private Companies

TAKEAWAY

Under the DTSA, at the pleading stage, a plaintiff must adequately identify the alleged trade secrets to survive a motion to dismiss, and a noncompete provision in an employment contract without confidentiality and nondisclosure provisions may be insufficient to establish that reasonable secrecy measures were taken with employees. While a customer contact list may be a protectable trade secret, it must pleaded that such lists contain information that is not readily available.

DETAILS

Procedural Posture: The defendants' motion to dismiss.

Factual Background: AutoExpo, an automobile dealership, brought suit against multiple defendants for trade secret misappropriation under the DTSA. AutoExpo alleged that former insiders misappropriated AutoExpo's trade secrets to divert business to their new competing dealership. The alleged trade secrets consisted of AutoExpo's customer lists, as well as a proprietary, custom-built inventory system. AutoExpo claimed it maintained the secrecy of this information by limiting access to only employees who owed fiduciary duties to the company and by storing it in secured computer systems protected by firewalls, usernames, and passwords. The defendants filed a motion to dismiss the DTSA claims.

Court's Decision: The court granted the defendant's motion to dismiss the DTSA claims because (1) AutoExpo failed to plausibly support the existence of a trade secret and (2) AutoExpo did not adequately plead that it took reasonable steps to protect the alleged trade secrets. In the Second Circuit, the court held, alleging general categories of information and data is not enough to put a defendant on adequate notice of the contours of a misappropriation claim, whereas AutoExpo's complaint relied on conclusory, generalized allegations. Customer lists can be protectable trade secrets, but the plaintiff must adequately plead the lists contain information that is not readily available, such as, for example, individualized customer preferences or specialized knowledge of customer operations gained through personal solicitations. AutoExpo also failed to explain how or why their custom-built inventory system was unique, other than the fact that it was custom-built. Further, the court found that merely restricting trade secret access to those employees owing a fiduciary duty was not sufficient to meet the DTSA pleading requirements for reasonable secrecy measure. The court emphasized that AutoExpo did not identify any non-disclosure agreements or contractual provisions binding employees to non-disclosure or secrecy; a noncompetition provision was not enough to establish reasonable secrecy measures.

***Negative, Inc. v. McNamara*, No. 23-cv-08503, 770 F. Supp. 3d 472 (E.D.N.Y. 2025).**

INDUSTRY

Fashion & Retail

TAKEAWAY

The existence of a confidentiality agreement that informs employees that certain information is to be kept secret is probative in the court's assessment of whether a plaintiff has taken "reasonable measures" to keep such information secret, thereby constituting a trade secret.

DETAILS

Procedural Posture: The defendant's motion to dismiss.

Factual Background: The plaintiff, a fashion business, engaged the defendant as a freelance contract worker to provide demand planning services. To facilitate the work the defendant was to perform, the plaintiff granted the defendant access to information maintained on its Google Drive and Shopify user account. After four years, the defendant resigned. Months after the defendant's resignation, the plaintiff learned that the defendant spent the week before she left the company accessing and downloading information from the plaintiff's Google Drive and Shopify user account to her personal devices.

The plaintiff alleged that the defendant wrongfully downloaded (1) customer contact and sales information and information regarding supplier relationships; (2) financial information concerning the plaintiff's costs of goods and pricing for various lines and styles of apparel and marketing strategies; (3) pricing strategies, information for managing inventory, logistics, and distribution and business plans; (4) tech packs for the manufacture of the plaintiff's products; and (5) non-public product designs and drawings for the plaintiff's future products.

The plaintiff referred to all this information as confidential, proprietary, and trade secrets. However, the plaintiff did not allege that it ever communicated to the defendant that such information was confidential. The plaintiff pled that none of the downloaded information was publicly accessible and required a person to sign-in, with multiple authentication factors, to access the information. The plaintiff also pled that the defendant had access to files that were not accessible to all employees and when such files were shared internally, they were shared in a "for-eyes-only format" without the ability to download or print.

The plaintiff alleges that the defendant misappropriated confidential information in violation of the Computer Fraud and Abuse Act, DTSA, and other state laws.

Court's Decision: The principal issue at the motion to dismiss stage was whether the plaintiff alleged sufficient facts to demonstrate that the plaintiff took reasonable measures to protect the customer lists and product designs under the circumstances, as required to establish the existence of a trade secret under both federal and New York law. In analyzing whether the plaintiff took reasonable measures under the circumstances, the court considered the absence of a confidentiality agreement that would have communicated to the defendant that the information she accessed was meant to be secret.

The absence of such an agreement was probative to the court's assessment of this issue. The court found that accessibility measures such as "an intentional sign-in with multiple authentication factors" and sharing documents in a "for-eyes-only format" did not constitute "reasonable measures" in the absence of any indication that the plaintiff actually communicated to the defendant or other employees that any of the information was to be kept secret. The court cautioned that finding otherwise would have a sweeping effect where information could later be deemed to be trade secrets based on basic procedures that employees use to log into their computers every day.

Although some courts have held trade secrets exist in the absence of a confidentiality agreement, this court distinguishes this case because the plaintiff pled very few facts to establish the "reasonable measures" it took to protect the information. This circuit has consistently held that merely informing an employee that information should be kept secret, which the plaintiff did not plead here, is not a sufficient "reasonable measure" to keep information secret. Where the plaintiff has failed to show that the defendant's actions were in violation of any agreement, the court granted the defendant's motion to dismiss the plaintiff's DTSA claim.

PleasrDAO v. Shkreli, **No. 24-cv-4126 (PKC) (MMH), 2025 WL 2733345 (E.D.N.Y. Sep. 25, 2025).**

INDUSTRY

Media & Entertainment

TAKEAWAY

Denied motion to dismiss DTSA and New York trade secrets law of unreleased Wu Tang Clan album.

DETAILS

Procedural Posture: The defendant's motion to dismiss.

Factual Background: Wu-Tang Clan, a famous hip-hop group, produced a single physical copy of the album "Once Upon a Time in Shaolin," which was never publicly released. In 2015, Martin Shkreli, a former pharmaceutical executive, purchased the album. Under the Original Purchase Agreement (OPA), Shkreli paid $2 million to acquire the album and 50% of the related copyrights. The OPA imposed stringent usage limits: Shkreli could duplicate the album "for private use" and exhibit (i.e., play) the work in limited venues such as his home, galleries, and small spaces. Shkreli was prohibited from duplicating the album for other purposes. The OPA required that the same terms be imposed if Shkreli were to resell the album.

In 2018, following Shkreli's conviction for securities fraud and conspiracy to commit securities fraud, the US District Court for the Eastern District of New York ordered forfeiture to satisfy a $7.36 million money judgment. The order restrained Shkreli from diminishing the value or marketability of forfeited assets, which included the album. After forfeiture, the United States sold the album to the plaintiff, PleasrDAO.

Shkreli was released from prison in May 2022. Following his release, Shkreli repeatedly stated on social media that he had retained digital copies of the album. Shkreli allegedly played the album online, sent copies to others, and threatened to make it available for public download. During a June 2024 social media "Spaces" session, Shkreli allegedly streamed the album to roughly 4,900 listeners.

In June 2024, PleasrDAO sued Shkreli for enforcement of the forfeiture order, and alleged, *inter alia*, federal and state law claims for misappropriation of trade secrets. Following a TRO and preliminary injunction restrained Shkreli from "possessing, using, disseminating, or selling any interest in the Album," Shkreli moved to dismiss all claims.

Court's Decision: The defendant's motion to dismiss regarding the trade secrets claims denied.

PleasrDAO's trade secret claims alleged that the album itself, as well as its data and files, are protectable trade secrets. The court acknowledged this unusual application of trade secrets concepts, noting "the Album's data and files arguably fall somewhere between information used in running Plaintiff's business and information that is its product." Nonetheless, the court reiterated trade secrets could "include all forms and types of business information," so long as the necessary secrecy and economic value elements are satisfied.

The court concluded that the album qualifies as a protectable trade secret. Despite Shkreli's defense that he did not maintain secrecy of the album when it was in his lawful possession, the court accepted the plaintiff's assertion that "the Album is confidential and proprietary, and the contents of the Album's data and file remain unknown to the public at large." The court noted that the original OPA imposed significant restrictions on Shkreli's ability to distribute the album. Further, the court concluded that PleasrDAO plausibly alleged reasonable measures to maintain the secrecy of the album since becoming its owner. Specifically, PleasrDAO asserted that "at all relevant times," it "moved the Album by secure transport and/or kept the Album in a secure location." "The security measures undertaken included the use of armed security guards, secure entrance and exit points, and continual video surveillance, oversight and checks on the Album's condition."

Because PleasrDAO's complaint pleaded facts sufficient to support the conclusion that the album qualifies as a protectable trade secret, the court denied Shkreli's motion to dismiss the plaintiff's trade secret claims.

***Shoreline Aviation, Inc. v. Sound Aircraft Flight Enterprises, Inc.*, No. 2:20-cv-02161, 2025 WL 1540851 (E.D.N.Y. May 30, 2025).**

INDUSTRY

Transportation & Mobility

TAKEAWAY

Even when a customer list is jointly developed and maintained, it may still be considered one party's trade secret, a determination left to the trier of fact.

DETAILS

Procedural Posture: Cross-motions for summary judgment.

Factual Background: The plaintiff, a seaplane operator that flew between East Hampton and Manhattan, New York, entered into an oral agreement with the defendant's predecessor under which the predecessor, and later defendant Sound Aircraft Enterprises, Inc. (SAFE), booked customers on the plaintiff's flights in exchange for a commission. Through that work, SAFE had access to the plaintiff's customer list.

The parties negotiated a deal to sell the customer list to a third party, Blade. The plaintiff was initially involved in negotiations but eventually stopped participating, and SAFE sold the list to Blade.

The plaintiff filed suit against the defendant, bringing, among others, claims for trade secret misappropriation. SAFE moved for summary judgment on the trade secret claims, arguing that, because the customer data at issue was "created and held" by SAFE, and "related to [SAFE's] clients," the data could not be the plaintiff's trade secret.

Court's Decision: The district court denied SAFE's motion for summary judgment, holding that a reasonable jury could find that the customer list SAFE sold to Blade was the plaintiff's trade secret. The court reasoned that the plaintiff's customer list "was not information known outside the business," and that the plaintiff gave SAFE access to the list to "perform their role as [Plaintiff's] booking agent but instructed them not to disclose the customer data to" any third party.

***FXRobott LLC v. Noetiq Rsch. Inc.*, No. 25-cv-2264 (LJL), 2025 WL 1874888 (S.D.N.Y. Jul. 8, 2025).**

INDUSTRY

AI & Emerging Technologies, Private Companies

TAKEAWAY

Preliminary injunctions in software trade secret disputes require precise identification of the trade secret's technical contours and merely describing what the software is intended to accomplish is insufficient. Instead, the plaintiff must explain the actual composition and function of the software. In addition, a plaintiff must also be able to show that the alleged trade secret derives economic value from not being generally known, a standard that cannot be met if the software is trading at a negative value and has attracted no investors.

DETAILS

Procedural Posture: Motion for preliminary injunction.

Factual Background: The plaintiffs hired individual and corporate developers under non-disclosure agreements (NDA) and software development agreements to build an AI-driven foreign exchange trading platform, storing code in GitHub. The plaintiffs failed to pay the defendants for their work, and the relationships were terminated in February 2025. At the time of termination, the defendants returned equipment and materials used in their work for the plaintiffs. They also engaged in high level discussions — without writing code or launching — about a separate concept, for which they reused charts and graphs they had created for the plaintiffs' investor deck. The plaintiffs sought to enjoin the defendants' use of "work product" and trade secrets and argued the defendants withheld deliverables and misused confidential materials.

Court's Decision: The court denied the request for injunctive relief, finding the plaintiffs failed to show likelihood of success on DTSA or breach of contract claims and failed to establish irreparable harm. On DTSA, the plaintiffs defined the trade secret as "all Work Product," an amorphous compilation of software, documentation, concepts, and methodologies, which did not meet the Second Circuit's specificity requirement for software trade secrets. The two identified categories also fell short. The code lacked demonstrated independent economic value (it attracted no investors and was never sold), and secrecy measures were questionable given the plaintiffs' sharing of the GitHub repository with a third party and filing materials publicly. The charts and graphs were not trade secrets because the plaintiffs publicly docketed them and circulated them to non-employees, and they were intended for investor dissemination rather than conferring competitive secrecy-based value. On irreparable harm, the court rejected arguments based on hypothetical dissemination, reputation, and goodwill. The plaintiffs had no customers, alleged harms were compensable by money damages or already occurred, and contractual "irreparable harm" language did not substitute for proof.

***Hayden v. International Business Machines Corp.*, 2025 WL 1697021, No. 21-cv-2485 (S.D.N.Y. Jun. 17, 2025).**

INDUSTRY

AI & Emerging Technologies, Private Companies

TAKEAWAY

A plaintiff alleging trade secret misappropriation must be able to identify with specificity the trade secret that was misappropriated. Failure to adequately identify the trade secret and its component parts or submitting expansive documentation as identification of the secret may create a "moving target" that makes the trade secret impossible to identify or defend.

DETAILS

Procedural Posture: The defendant's motion for summary judgment.

Factual Background: The plaintiff worked as an industry consultant for the defendant from 2015 to 2018. The plaintiff alleged that prior to his employment, he developed his trade secret, a "methodology to construct an architecture for a digital platform" called Awareness to Execution (A2E). Following his separation from the defendant in 2018, the plaintiff claimed the defendant's "Cloud Paks" AI-powered software solution misappropriated his A2E trade secret.

Court's Decision: The court granted IBM's motion for summary judgment, holding that the plaintiff failed to define his trade secret with specificity. The court found that "[f]ar from satisfying his burden to describe his alleged trade secret with precision, Plaintiff instead equivocates in nearly every respect when discussing his alleged secret." Specifically, the court noted:

- The plaintiff failed to refer to his alleged trade secret in a consistent manner, at different times describing it as "an architecture," "a combination of software, hardware and other elements," and "a methodology to construct an architecture for a digital platform."
- The plaintiff failed "to provide either a definitive list of the elements of A2E or explain how they work together in a unique manner." Instead, the plaintiff argued that "multiple 'combinations of elements of his A2E' were misappropriated, suggesting that the alleged trade secret is any combination of elements from a yet-to-be-defined list."
- The plaintiff's attempt to identify "the complete documentation" of his purported trade secret "without identifying exactly which pieces of information are the trade secrets" is prohibited, because this tactic "presents an active—and prohibited—moving target when it comes to defining his trade secret."
- The documents the plaintiff used to identify the trade secret contained "vague descriptions and rudimentary graphics and concepts," like "becoming aware of an opportunity/risk," "analyzing the personal implications," "moving Human Capital Activity from Low Value Transactional activities to High Value Interactions," and becoming "real time customer centric."

The court further determined that the plaintiff's failure to specify his alleged trade secret "leaves defendants unable to defend adequately against his allegations."

***Marsh & McLennan Agency, LLC v. Alliant Insur. Servs., Inc.*, No. 1:24-cv-9914-MKV (S.D.N.Y. Jan. 27, 2025).**

INDUSTRY
Insurance & Reinsurance

TAKEAWAY
A New York federal court granted in substantial part a preliminary injunction enforcing client nonsolicitation, non-servicing, and confidentiality covenants against a departing executive and his new

employer, finding irreparable harm from the loss of client relationships and goodwill, a clear likelihood of success on the merits as to misuse of confidential client information and solicitation, and a sufficient basis to enjoin the competitor for tortious interference.

DETAILS

Procedural Posture: The plaintiff, an insurance agency, moved for a TRO and preliminary injunction to enforce nonsolicitation, non-servicing, and confidentiality covenants and to restrain misappropriation of trade secrets and tortious interference following the resignation and departure of a senior executive to a competitor, Alliant Insurance Services, Inc. After issuing the TRO, the court conducted a hearing and granted the preliminary injunction in part and denied it in part.

Factual Background: Marsh & McLennan Agency, LLC (MMA) and Alliant compete in insurance brokerage and risk management. Osborne, a senior client-facing executive at MMA with a seven-figure annually renewing book of business, resigned on December 16, 2024, to join Alliant, after what he reportedly described as a "life-changing" compensation offer. Team members soon followed. In the weeks preceding his resignation, Osborne scanned his restrictive covenant agreement to his personal email and created and circulated to his team two off-system spreadsheets — two client lists — containing detailed client identities, contacts, policy numbers, expiration and renewal dates, premiums, and carrier information that MMA maintained in its client systems. Within days of Osborne's departure, at least 29, and ultimately 38, clients in Osborne's book submitted broker-of-record letters moving their business to Alliant, many dated the day after his resignation. MMA also obtained evidence that Osborne contacted MMA clients post-resignation and directed client communications to Alliant.

Court's Decision: The court found irreparable harm based on the immediate loss of client relationships and goodwill. On likelihood of success, the court concluded that MMA was likely to prevail on its claims that Osborne breached the client nonsolicitation and confidentiality provisions. As to balance of hardships, the court tipped toward MMA on tortious interference with contract and business relations, given Alliant's knowledge of Osborne's covenants and the ensuing client departures. The court rejected the defendants' argument that the covenants were unenforceable under New York law, distinguishing non-competes from client nonsolicitation and non-servicing clauses and applying BDO Seidman's reasonableness framework. Concluding that the public interest favored enforcing contracts and deterring misuse of confidential information, the court enjoined the defendants from soliciting, accepting, or servicing MMA clients or prospective clients with whom the individual defendants had contact or about whom they obtained information during the last two years of their MMA employment. The court also enjoined the defendants from endeavoring to cause MMA employees to depart and from using or disclosing data contained in either list.

***Talenthub Worldwide, Inc. v. Talenthub Workforce, Inc.*, 24 Civ. 6264, 2025 WL 2578385 (S.D.N.Y. Sep. 5, 2025).**

INDUSTRY

Private Companies, Venture Capital & Emerging Businesses, Talent Acquisition

TAKEAWAY

DTSA claimants must take reasonable efforts to maintain the secrecy of confidential information shared amongst business partners for the confidential information to retain trade secret protection. Passwords, employee-only credentials, and even a general duty of loyalty alone are insufficient where access is voluntarily shared without a confidentiality agreement or other reasonable restrictions. Failure to secure access to confidential information after a relationship deteriorates is also a failure to make reasonable efforts to maintain the secrecy of the shared information.

DETAILS

Procedural Posture: The defendant's motion to dismiss complaint.

Factual Background: Talenthub Worldwide, Inc. is a staffing firm that operated its business on the cloud-based Avionté platform. The staffing platform housed client lists, employee data, sales reports, payroll, and other operational materials, and required login credentials for access. In 2021, Talenthub Worldwide helped form Talenthub Workforce, Inc. as a separate company to better serve a major customer's preference to work with minority and women-owned businesses. Talenthub Worldwide loaned funds and allowed Talenthub Workforce shared access to Avionté.

The relationship deteriorated when several "high-level" employees resigned from Talenthub Worldwide, joined Talenthub Workforce full-time, and began competing directly with Talenthub Worldwide. In the aftermath, Talenthub Worldwide sent several demand letters claiming the departed employees had stolen company computers and that Talenthub Workforce accessed Avionté without authorization. Talenthub Worldwide offered Talenthub Workforce its own Avionté login credentials so both sides could continue using the staffing platform despite the split. Talenthub Worldwide alleged that, notwithstanding that proposal, Talenthub Workforce continued to access and use Talenthub Worldwide's Avionté account and data without authorization while operating as a competitor.

Talenthub Worldwide asserted that the defendants misappropriated trade secrets in violation of (1) the DTSA, (2) the Computer Fraud and Abuse Act (CFAA), and (3) New York law.

Court's Decision: The court granted the defendants' motion to dismiss with respect to all the plaintiff's claims. On the DTSA claim, the court concluded Talenthub Worldwide had not plausibly alleged reasonable measures to keep the information secret vis-à-vis the defendants. The complaint and incorporated correspondence showed that Talenthub Worldwide voluntarily provided the defendants with access to the Avionté platform housing the alleged trade secrets and did so without confidentiality agreements or comparable restrictions. Talenthub Worldwide continued to permit access even after the defendants began operating as a competing entity. Passwords and employee-only credentials were insufficient where the defendants were under no obligation to maintain confidentiality, and any asserted duty of loyalty did not substitute for reasonable protective measures. The court emphasized that voluntary disclosure to parties under no confidentiality obligation extinguishes the trade secret property right. The court also found that the alleged trade secrets lost their protection under DTSA when Talenthub Worldwide continued to share access with Talenthub Workforce voluntarily despite the failed relationship.

The court also dismissed the claims brought under the CFAA as untimely and the claims under New York common law after denying supplemental jurisdiction. On October 24, 2025, the court denied Talenthub Worldwide's motion for reconsideration. In November 2025, Talenthub Worldwide filed an appeal in the US Court of Appeals for the Second Circuit.

THIRD CIRCUIT

Third Circuit

***Harbor Business Compliance Corp. v. Firstbase.io, Inc.*, 152 F.4th 516 (3d Cir. 2025).**

INDUSTRY

AI & Emerging Technologies, Private Companies

TAKEAWAY

The plaintiffs asserting claims of misappropriation of trade secrets and unfair competition cannot recover the same compensatory damages twice for the same wrongdoing. A plaintiff seeking compensatory damages based on disgorgement of the defendant's profits related to the misappropriation cannot disgorge "the same profits" twice under separate theories of unlawful conduct.

DETAILS

Procedural Posture: Appeal of the district court's denial of the defendant's motion for remittitur.

Factual Background: The defendant engaged the plaintiff to expand its incorporation and registered agent services nationwide under an agreement in which the plaintiff provided white-label business registration services to the defendant's clients under the defendant's name. The defendant terminated the partnership and developed its own business registration service. The plaintiff sued, claiming the defendant misappropriated eight of the plaintiff's trade secrets to establish its product, and making claims for trade secret misappropriation under the DTSA and the Pennsylvania Uniform Trade Secrets Act (PUTSA), unfair competition, and breach of contract. A jury found the defendant misappropriated six of the eight alleged trade secrets and engaged in unfair competition. The plaintiff's damages expert calculated that the defendant's past and future profits attributable to the misappropriation equaled $14,657,399. The jury awarded $11,068,044 in compensatory damages for trade secret misappropriation, 75% of the defendant's alleged profits. It also awarded $14,657,399 in compensation damages for unfair competition, equal to 100% of the defendant's alleged profits. The district court denied the defendant's motion for remittitur, finding the jury's damages calculation was reasonable. The defendant appealed to the Third Circuit.

Court's Decision: The court reversed the district court's denial of the motion to remit the $11,068,044 damages award. The court determined that the jury "awarded both the lost profits" in its unfair competition damages "and, improperly, another seventy-five percent of those same lost profits" in its trade secret misappropriation damages. Though the plaintiff argued that the jury heard evidence that its unrealized revenue was up to $38,700,000, the court determined that the jury's "unique math" showed that it "plainly did not base its damages on unrealized revenue" and instead based its damages on disgorgement of the defendant's profits. This was evident in the jury's specific request in its deliberations for the plaintiff's damages expert's slides with his profit calculations, as well as that the plaintiff's "only theory . . . at trial was disgorgement of $14 million in profits."

***NRA Group, LLC v. Durenleau*, 154 F.4th 153 (3d Cir. 2025).**

INDUSTRY

Financial Services

TAKEAWAY

Passwords that protect proprietary business information do not have independent economic value; thus, they are not trade secrets under federal or Pennsylvania law.

DETAILS

Procedural Posture: The plaintiff's appeal from the grant of summary judgment in favor of the defendants.

Factual Background: The plaintiff was the defendants' former employer who alleged that its former employees violated the DTSA and the parallel PUTSA after one of the employees emailed the other employee, a senior manager, a spreadsheet that included a list of all her passwords for several of the plaintiff's systems and third-party accounts.

A time sensitive work issue arose while the senior manager was out sick and was without access to a laptop to access the plaintiff's systems from home. Due to her sickness, she also could not come into the office. In response to this urgent work issue, the senior manager provided the other defendant employee her system credentials. That employee accessed the network as the senior manager and emailed the senior manager the spreadsheet. The spreadsheet contained only passwords; it did not contain any consumer personally identifiable information.

Court's Decision: On appeal, the issue was whether the defendant senior manager's passwords had independent economic value such that they would be trade secrets under federal or state law.

The court conceded that a compilation of data that has independent economic value can be protected as a trade secret. Although the senior manager's password spreadsheet was a compilation of data, the court found that it was not a "compilation of customer data" or some other "intellectual property of the owner." The spreadsheet of passwords was also unlike other cases where the password information was coupled with other, more colorable trade secrets like raw customer information, pricing schemes, strategy documents, etc.

The court also adopted the district court's reliance on *State Analysis, Inc. v. American Financial Services Ass'n*, 621 F. Supp. 2d 309 (E.D. Va. 2009). *State Analysis* held that passwords are "simply a series of random numbers and letters that is a barrier to" other proprietary information. *Id*. at 321. While passwords may have economic value if necessary to access proprietary information, the passwords have no independent economic value in the way a customer list might have. It is what the passwords protect, not the passwords themselves, that is valuable.

The plaintiff did not allege that the passwords were the "product of any special formula or algorithm." As such, the passwords in the spreadsheet were merely numbers and letters that blocked access to the proprietary information that did have independent economic value.

The court thus affirmed the district court's holding that the passwords were not trade secrets under federal or state law.

***Biohaven Therapeutics, Ltd. v. Avilar Therapeutics, Inc.*, No. CV 23-328-JLH-CJB, 2025 WL 2443517 (D. Del. May 1, 2025).**

INDUSTRY

Life Sciences

TAKEAWAY

Under the DTSA, a trade secret claim may be brought by an "owner," which includes one with a "license" in the trade secret. For standing purposes at the pleading stage, this may be an exclusive or non-exclusive licensee of the trade secret.

DETAILS

Procedural Posture: Motion to dismiss.

Factual Background: Dr. Spiegel, a Yale professor, developed a new approach to target and destroy certain proteins in the body using a particular class of synthetic molecules, designated as "MODA" technology. Dr. Spiegel and Yale filed both provisional and non-provisional patent applications based on the MODA technology. A few years later, Biohaven signed an agreement with Yale to develop and commercialize the MODA technology. This agreement licensed to Biohaven the MODA technology and the rights to the MODA patents, as well as possession of the MODA trade secrets. Prior to the agreement with Biohaven, Yale and Dr. Siegel had engaged in discussions with RA Capital, a venture capital fund, about a similar partnership. Under a confidential disclosure agreement (CDA), Dr. Spiegel shared certain MODA trade secrets with RA Capital for the purpose of evaluating a potential contractual relationship between the parties. Negotiations broke down, and the parties did not enter any partnership. Shortly after, RA Capital formed and incorporated Avilar. Avilar and RA Capital filed patent applications for their own targeted protein degradation technology. Biohaven and Yale brought suit for misappropriation of trade secrets under the DTSA and DUTSA. The plaintiffs alleged that RA Capital developed and commercialized the MODA trade secrets disclosed by Dr. Siegel under the CDA. The plaintiffs also alleged that RA Capital disclosed the MODA trade secrets to its employees beyond the limits of the CDA. RA Capital and Avilar moved to dismiss the trade secret claims, arguing that:

1. Yale and Dr. Spiegel published the alleged trade secrets in their prior patent applications, such that they no longer constituted trade secrets.
2. The plaintiffs failed to plead that the alleged trade secrets derived independent economic value from their secrecy.
3. The plaintiff failed to allege reasonable measures were taken to keep the information secret.
4. The defendants did not owe the plaintiffs any duty of secrecy.

5. Biohaven lacked standing to bring a claim under the DTSA because it was not an owner of the alleged trade secret.

Court's Decision: The court denied the motion to dismiss the DTSA and DUTSA claims. The court addressed each of the defendants' arguments in turn:

Existence of protectable trade secret.

– The highly technical nature of the MODA trade secrets, as well as alleged evidence of RA Capital's use of the trade secret *prior* to Dr. Siegel and Yale's patent applications, led the court to reject the defendants' argument related to the status of the MODA trade secrets.

Independent economic value from secrecy.

– The court found that the plaintiffs had sufficiently alleged independent economic value based on the years of research and development investment, the confidential nature of the materials, and the alleged cost savings to the defendants from the accelerated development of their own MODA technology.

Reasonable measures to maintain secrecy.

– The court found that the plaintiffs plausibly alleged reasonable measures, based on the execution of the CDA limiting use and disclosure of the MODA trade secrets, explicit confidentiality markings on materials, and distribution via a restricted Dropbox.

Duty to maintain secrecy.

– The defendants' argument as to the lack of duty to maintain secrecy was premised on the assumption that the plaintiffs were seeking protection for a pre-CDA, high-level presentation on the MODA technology. Because the plaintiffs confirmed that they were not seeking protection for this category of information and because the CDA was not as to a lack of confidentiality in other areas, the court rejected this argument.

Biohaven's standing as an owner under the DTSA.

– The defendants' argument centered around the proposition that the DTSA should only be read to constitute exclusive licensees as owners, and thus because Biohaven was a non-exclusive licensee, Biohaven had no standing to sue under the DTSA. The court pointed to the plain meaning of "license" to support its decision, and that US Congress did not limit that license to an "exclusive" one. The court further dismissed the defendants' attempted analogy to patent infringement, which requires an exclusive license for standing, because trade secret misappropriation involves property intrusion *and* a breach of confidence. The court found it likely that Congress would permit the victim of such a breach of confidence to litigate a trade secret violation.

***Montway LLC v. Navi Transport Svcs. LLC*, No. 25-cv-00381, 2025 WL 3151403 (D. Del. Nov. 11, 2025).**

INDUSTRY

Transportation & Mobility, Hospitality

TAKEAWAY

Montway has two takeaways. First, while a complaint may rely on circumstantial evidence of misappropriation, where that circumstantial evidence may leave ambiguous the lawfulness of the competitor's conduct, some "plus factor" is generally necessary to adequately plead misappropriation. Such plus factors are necessary to make the plaintiff's theory of misappropriation plausible to survive a motion to dismiss. The plaintiff, however, will have to prove that the alleged misappropriation occurred following the close of discovery. Second, to successfully allege a state-law trade secrets claim, the plaintiff must allege that the misappropriation took place in the governing state. That a party is based or incorporated in the relevant state is an insufficient nexus between the allegations and the jurisdiction.

DETAILS

Procedural Posture: The defendants' motion to dismiss.

Factual Background: Montway LLC is an Illinois-based leading automotive-transport broker that assists customers with transporting their vehicles across the country. In Montway's industry, a customer who wants to ship their car reaches out to a broker with their location, destination, and vehicle information. A broker — such as Montway — responds with a quote and posts the shipping job to a centralized "load board" viewable by other brokers and carriers, or the entities who would physically transport a vehicle. If a carrier thinks that the offered price is fair, then it may accept the job. The broker then connects the carrier and the customer and takes a cut of the quoted price as a broker's fee. To maintain the competitiveness of the brokerage system and to prevent undercutting, the customer's identity or contact information is anonymized.

Montway operates a Bulgaria-based subsidiary, MDG EOOD, that runs its sales operation. MDG EOOD had two employees: Ivan Karakostov and Radion Tzakov. In 2023, while still employed by MDG EOOD, Karakostov formed a competing broker, Navi Transport Services LLC. Soon after he formed the company and quit MDG EOOD, Karakostov approached Tzakov and encouraged him to leave MDG EOOD and join Navi, which he did.

After Karakostov and Tzakov left, Montway observed a consistent pattern. For multiple customer inquiries that Montway had internally recorded and quoted — but before those customers accepted Montway's quotes and before any job was posted to the load board — Navi appeared on the load board posting with what Montway describes as the same shipment at a lower price. Montway then lost the opportunity. Montway alleged that the most plausible explanation was that Navi was obtaining the identities and contact details of Montway's prospective customers from current Montway employees and then using that information to send unsolicited, lower quotes that undercut Montway.

There were other factors that made Montway suspicious. Navi's website generally resembled Montway's, including its terms of use page. It also contained a handful of peculiar, similarly worded reviews, including multiple reviews by people with the same name. One customer even stated in a review that Navi "solicited" her business. And Navi's website claimed that it had shipped more than 20,000 vehicles despite being new and having a minimal online footprint.

Montway and MDG EOOD sued Navi, Karakostov, and Tzakov for, *inter alia*, misappropriation under the DTSA and the DUTSA.

Court's Decision: The court denied Navi's, Karakostov's, and Tzakov's motion to dismiss with respect to Montway's DTSA claim in part.

The court found that Montway plausibly alleged protectable trade secrets in the identities and contact information of its potential customers, which were only anonymously posted to the load board. Montway reasonably maintained the secrecy of its customer identities and contact information by training employees on confidentiality, maintaining internal confidentiality policies and procedures, and imposing electronic safeguards to limit access. This secrecy gave the customer information value because, otherwise, competitors could use the information to submit cheaper quotes and undercut the broker, destroying the broker's first-mover advantage.

As to misappropriation, the complaint adequately alleged that Navi used Montway's trade secrets without consent and acquired them through improper means, namely by inducing or receiving confidential lead and contact information from current Montway employees who owed a duty of confidentiality. Although all the allegations were circumstantial, the court emphasized that pleading misappropriation through circumstantial evidence is permissible where there are sufficient "plus factors" making misappropriation plausible rather than speculative. The complaint alleged several such factors.

– Navi's negligible web presence relative to Montway.

– The timing pattern in which Navi posted ostensibly identical jobs at lower prices before Montway's prospects accepted Montway's quotes.

– A customer review indicating that Navi "solicited" business, consistent with unsolicited outreach rather than inbound inquiries.

Taken together, these facts plausibly supported the inference that Navi was using Montway's confidential lead information to target and undercut Montway's prospects.

Accordingly, the court denied dismissal of the DTSA claim against Navi. Additionally, the court denied the motion with respect to Montway's DTSA claim against Karakostov and Tzakov personally because allegations reflect that they were personally responsible for obtaining Montway's trade secrets and because they knew Navi's leads were gained through improper means. The court dismissed any DTSA theory premised on Montway's quotes themselves.

The court, however, dismissed Montway's DUTSA claim against the defendants without prejudice because the complaint did not plausibly allege that misappropriation occurred "in" Delaware. Based on the pleaded facts, the relevant conduct occurred in Bulgaria or possibly Illinois, but not

Delaware. The court permitted Montway to amend its complaint to add more facts to support the DUTSA claim.

***Safety Holdings Inc. v. Sentinel Information Systems LLC, et al.*, 1:24-cv-01224 (D. Del.).**

INDUSTRY

AI & Emerging Technologies

TAKEAWAYS

Expansive application of what constitutes the "use" of a trade secret under DTSA enables plaintiffs to pursue DTSA claims not only against an alleged misappropriator but also third parties who indirectly benefitted from the misappropriation or merely marketed products or services that "embody" the misappropriated trade secret.

DETAILS

Procedural Posture: The plaintiff, SambaSafety, provides driver compliance software solutions, including tools that aggregate state motor vehicle record data into single-drive reports. The defendants are Sentinel Information Systems, LLC, InformData, LLC, 305 DevCo, Inc., and Efrian Logreira. InformData moved to dismiss all claims.

Factual Background: SambaSafety alleges its driver compliance software solutions, including tools that aggregate state motor vehicle record data into single-driver reports and its proprietary continuous monitoring system, contain protectable trade secrets such as source code, object code, executables, database schema, and data tables. The complaint traces the technology's origin to SambaSafety's 2014 acquisition of Softech International, Inc. from founder Efrain Logreira. SambaSafety contends that the defendants were positioned to go to market with their competing products faster than independent development would allow due to the alleged misappropriation. Specifically, SambaSafety alleges that Logreira retained the original software after selling Softech, which he then used to found Sentinel in 2018 to accelerate competing offerings. InformData Holdings, LLC acquired Sentinel in 2024 and rebranded it as InformData Risk Solutions, which competed directly with SambaSafety allegedly using SambaSafety's proprietary software retained by Logreira. SambaSafety also alleges Logreira recruited former Softech personnel now at SambaSafety. InformData moved to dismiss the DTSA claim, arguing, inter alia, that misappropriation was inadequately pleaded. US Magistrate Judge Sherry R. Fallon recommended the motion to dismiss be denied.

Court's Decision: Report and recommendation that the motion to dismiss be denied. As to the alleged improper acquisition of the trade secret information, InformData argued that the complaint only alleges wrongful acquisition of SambaSafety's proprietary software by Logreira. The court, however, determined that the complaint plausibly alleged that InformData acquired the trade secrets knowing or having reason to know they were obtained by improper means, including allegations that Logreira had sold the technology to SambaSafety via Softech yet retained the original software and later used it in developing products for InformData.

As to the alleged improper use of the trade secret information, InformData argued that the complaint does not allege specific facts regarding InformData's improper use of SambaSafety's trade secrets. The court concluded that the complaint plausibly alleged InformData used SambaSafety's trade secrets to develop and market competing driver compliance solutions and to accelerate product development, which qualifies as "use" under DTSA. In reaching this conclusion, the court noted that "use of a trade secret encompasses all the ways one can take advantage of trade secret information to obtain an economic benefit, competitive advantage, or other commercial value, or to accomplish a similar exploitative purpose, such as assist[ing] or accelerat[ing] research or development." The court applied an even more expansive definition of use as including "marketing goods that embody the trade secret [and] employing the trade secret in manufacturing or production[.]"

***California Safe Soil, LLC v. KDC Agribusiness, LLC*, No. 2021-0498-MTZ, 2025 WL 98479 (Del. Ch. Jan. 10, 2025).**

INDUSTRY

Agriculture & AgTech

TAKEAWAY

An integrated end-to-end process can qualify as a protectable combination trade secret. Using that process as a springboard after a license ends is misappropriation, even where the user tweaks elements.

DETAILS

Procedural Posture: Post-trial opinion.

Factual Background: California Safe Soil, LLC, (CSS) developed a proprietary enzymatic process to recycle food waste into a nutrient-dense output that can be used to make fertilizer and animal feed. In 2015, CSS entered into an exclusive license agreement with KDC Agribusiness, LLC for KDC's use of CSS' intellectual property, including trade secrets, outside of California. KDC was owned by the Kamines, a father and his two sons (collectively with another individual, the individual defendants). KDC planned to open a large facility in Pennsylvania to scale the CSS process. KDC learned the minutiae of the CSS process through repeated site visits and access to large amounts of confidential information and documentation. As KDC moved towards building the Pennsylvania plant, it pursued changes and improvements to the CSS process, including a non-enzymatic process, but continued to base its design and plans on the CSS process.

In late 2019, KDC sought to renegotiate lower royalties. When negotiations failed, KDC stopped paying minimum royalties. CSS responded by converting KDC's exclusive license to nonexclusive, but KDC informed CSS that it was not operating a licensed facility, using the licensed process, or creating licensed products. KDC believed that its non-enzymatic process did not constitute a licensed process. As of May 2020, KDC did not have any license from CSS. In May 2020, KDC secured over $100 million in bond financing to build the Pennsylvania plant, supported by materials describing a process substantially derived from CSS' process. In its marketing materials, KDC, though relying on the non-enzymatic process, highlighted the option to add enzymatic digestion into the process. In 2021, the Pennsylvania plant was completed and production began. In June 2021, CSS sued KDC and the individual defendants, alleging trade secret misappropriation and other claims. KDC later entered bankruptcy, and default was entered against it, but the case proceeded to trial against the individual defendants.

Court's Decision: The court found the CSS process to be a protected "combination" trade secret and entered judgment on the misappropriation claims in favor of CSS. Although CSS had not kept secret certain elements of the process, the unique combination and integration of steps, parameters, and know-how were not generally known or readily ascertainable. The court found that CSS had taken reasonable measures to protect the secrecy of the CSS process, including consistent use of NDAs, password protected files, and limited disclosure practices. Further, the court found that CSS had identified its trade secret with sufficient specificity both in the contracting and litigation. The license agreement between KDS and CSS defined the broad parameters of the trade secret. Moreover, the court found that the individual defendants misappropriated the CSS trade secret by continuing to use a process derived from CSS' after the license ended. Shifting to a non-enzymatic variety did not allow the individual defendants to avoid liability, as they used CSS' process as a springboard to create the modified process. The court held each of the individual defendants liable, as each knew that the CSS process was a trade secret, and each was involved in the continued use of the CSS process after the license agreement had been terminated.

As to damages, the court used the parties' license agreement to establish the amount of compensatory damages, which included milestone payments and running royalties. However, the court denied CSS' request for exemplary damages and attorneys' fees. CSS argued that the individual defendants had acted with malice and bad faith. The court disagreed, finding that their behavior was consistent with misappropriating the CSS process, but did not rise to the level of malice or bad faith necessary to award exemplary damages or attorneys' fees.

***North American Fire Ultimate Holdings v. Doorly*, 2024-0023-KSJM, 2025 WL 736624 (Del. Ch. Mar. 7, 2025).**

INDUSTRY

Consumer Products

TAKEAWAY

The Delaware Court of Chancery refused to enforce restrictive covenants where the agreement's sole consideration — 300,000 Class B incentive units — was automatically forfeited upon a for-cause termination, holding that the loss of the only bargained-for consideration rendered the restrictive covenants unenforceable for lack of consideration under Delaware law. The court also dismissed a related tort claim for lack of personal jurisdiction because the asserted basis for jurisdiction arose solely from the unenforceable agreement.

DETAILS

Procedural Posture: North American Fire sued former-employee Alan Doorly, alleging that Doorley breached restrictive covenants following his termination. Doorley moved to dismiss all claims.

Factual Background: The defendant, Alan Doorly, worked for Cross Fire & Security, Inc., a New York fire alarm installation and service company which was acquired by North American Fire Ultimate Holdings, LP in May 2021. Following a February 2022 restructuring, Doorly received 300,000 Class B incentive units subject to time and performance vesting in exchange for signing an employment agreement that included confidentiality, nonsolicitation, and noncompete covenants. The agreement expressly stated the units were "adequate and sufficient consideration" for the restrictive covenants. However, the agreement provided that, upon a for-cause termination, both vested and unvested units would be automatically forfeited. Doorly resigned from Cross Fire in October 2023. After negotiations over Doorly's separation broke down, Cross Fire terminated him for-cause on December 27, 2023, thereby triggering forfeiture of the units. North American Fire sued to enforce the restrictive covenants and obtain damages and injunctive relief for allegedly impermissible competitive conduct tied to two bids and related solicitation activity.

Court's Decision: The court granted Doorly's motion to dismiss all claims. On the breach of contract claims, the court found that the restrictive covenants were unenforceable due to a lack of consideration, reasoning there was no surviving consideration to support enforcement because the agreement identified the incentive units as the sole consideration supporting the restrictive covenants and those units were rescinded via automatic forfeiture upon Doorly's termination. The court rejected Doorly's reliance on boilerplate recitals of "other good and valuable consideration" and distinguished obligations Doorly assumed as not constituting sufficient consideration.

In reaching that conclusion, the court cited Delaware authority that new restrictive covenants for an existing employee demand new consideration, such as a bonus or promotion. The court found none beyond the forfeited units and distinguished from other Delaware cases enforcing restrictive covenants on the basis that, in those cases, the employees retained the consideration exchanged for the restraints.

***Payscale Inc. v. Norman, et al.*, 2025-0118-BWD, 2025 WL 1622341 (Del. Ch. Jun. 9, 2025).**

INDUSTRY

AI & Emerging Technologies

TAKEAWAY

The Delaware Court of Chancery dismissed all claims seeking to enforce an employee noncompete, holding that it was unenforceable as overbroad in scope and declining to blue pencil the noncompete given unequal bargaining dynamics and non-negotiated, minimal consideration tied to incentive equity units.

DETAILS

Procedural Posture: Payscale sued a former senior director of sales, Erin Norman, and her new employer BetterComp, Inc., seeking to enforce restrictive covenants in two incentive equity agreements and asserting tortious interference claims; defendants moved to dismiss under Rule 12(b)(6).

Factual Background: Payscale — a subsidiary of Sonic Topco, L.P. — provides compensation data, software, and services nationwide. Erin Norman joined Payscale as director of sales in November 2021 and was later promoted to senior director of sales in February 2023. Norman executed two incentive equity agreements with Topco in March 2022 and August 2023, whereby she received profit interest units with an initial fair market value of $0.00, subject to vesting and transfer restrictions. Norman's equity agreements included noncompete, nonsolicit, and confidentiality provisions plus a clause automatically cancelling her incentive awards in the event she breached these restrictive covenants. Norman resigned in December 2023, and in October 2024 began working for BetterComp, a direct competitor of Payscale. Payscale notified Norman of her alleged breach of noncompete in November 2024 and filed suit against Norman and BetterComp in January 2025. Norman and BetterComp moved to dismiss.

Court's Decision:

- **Noncompete scope and enforceability**. The court declined to enforce Norman's noncompete, which barred Norman for 18 months post-employment from engaging "anywhere in the United States" in virtually any capacity for any "Competitive Business," defined to include any business Topco or any subsidiary conducted or proposed as of Norman's date of separation. The court found the nationwide scope and expansive role restrictions unreasonable given the minimal consideration of contingent profit units, distinguishing the case from sale-of-business scenarios where broad restraints can be justified. The court also held that the restrictive covenants were overbroad and unnecessary to protect Payscale's legitimate interests, in that the nonsolicitation clause's effectively unlimited geographic reach magnified the restraint to a worldwide effect despite Payscale's domestic footprint, and the clause's application to Topco and all unnamed subsidiaries was vague and disconnected from Norman's role. Carve-outs permitting only non-strategic, non-sales work or in unrelated business lines were too indeterminate to cure the overbreadth.

- **Blue penciling.** The court declined to reform the covenant, noting that, under Delaware law, this discretionary power should be exercised only where there is parity of bargaining power, where the restrictions were specifically negotiated, or where they were entered into in the sale-of-business context — none of which were plausibly alleged for employment-linked incentive agreements with non-negotiated terms and scant consideration.

– **Other restrictive covenants.** The complaint's allegations that Norman solicited customers and used confidential information were made "on information and belief" without supporting facts, and thus plaintiffs failed to state claims for breach of the nonsolicitation or confidentiality provisions.

– **Tortious interference.** The tortious interference with contract claim against BetterComp was similarly dismissed because the underlying noncompete was unenforceable and the other claims of breach were insufficiently pled. The tortious interference with prospective business relations claim failed for Payscale's failure to specify prospective opportunities of which it was deprived or defendants having utilized wrongful means, and because lawful competition privilege applied absent enforceable restraints or well-pled misconduct.

***Weil Holdings II, LLC v. Alexander*, C.A. No. 2024-0388-BWD, 2025 WL 689191 (Del. Ch. 2025).**

INDUSTRY

Health Care

TAKEAWAY

The Delaware Court of Chancery found a noncompete provision in an LLC agreement to be unenforceable and declined to blue pencil the noncompete after the fact because it was unreasonable in both duration and geographical scope where the provision applied for an ownership period plus two years afterwards and the geographical area was subject to change after the LLC agreement's execution.

DETAILS

Procedural Posture: Cross-motions for summary judgment.

Factual Background: In 2023, the defendant, Dr. Jeffrey Alexander, purchased an ownership interest in the plaintiff, Weil Holdings II, LLC. Weil Holdings is a holding company that owns multiple companies that operate in the podiatry industry, including Weil Foot and Ankle Institute (WFAI), which is where the defendant worked through the purchase. The defendant executed the plaintiff's LLC agreement, which contained a noncompete provision that prohibited him from competing against Weil Holdings or an "affiliate practice" within the "restricted territory" for so long as the defendant held an ownership interest in the company and for two years afterwards. Critically, the LLC agreement did not provide for a mandatory redemption right with respect to the defendant's ownership interest. Further, the restricted territory covered WFAI's 16 locations and locations of WFAI's affiliates, including in two states in which the defendant had never practiced. The LLC agreement also allowed for the restricted territory to expand as Weil Holdings opened new locations. Later in 2023, WFAI terminated the defendant, and the defendant began practicing podiatry at an alleged competing practice. The plaintiff brought suit, seeking, among other things, to enforce the noncompete. The parties cross-moved for summary judgment.

Court's Decision: The court granted the defendant's motion for summary judgment and denied Weil Holdings' cross motion for summary judgment. Although the parties disagreed as to the level of scrutiny that should be applied to the noncompete given the parties' relative bargaining power, the court held that the scope of the noncompete was unreasonable regardless.

In reaching that conclusion, the court reasoned that the duration of the noncompete was potentially indefinite, which rendered it invalid, because the LLC agreement did not afford members a mandatory redemption right. According to the court, it was immaterial that the LLC agreement gave Weil Holdings the option to repurchase the defendant's ownership interest because the defendant did not have the power to divest himself of his ownership interests and, therefore, start the clock on the two-year period following his ownership interest.
With respect to the geographic scope of the noncompete, the court stated that preventing the defendant from practicing podiatric medicine in four states, including two where the defendant had never practiced, was not appropriately tailored to protect Weil Holdings' legitimate business interests. The court also highlighted that the restricted territory could change because it was tied to affiliate practices as the defendant expanded the location of its practices or opened entirely new practices. In other words, the defendant could be working in an area that was not within the restricted territory but eventually find himself in breach of the noncompete if Weil Holdings decided to open a new practice in that location.

Finally, the court also declined to blue-pencil the noncompete provision. The court reasoned that this case did not demonstrate any of the hallmarks of equal bargaining power given that the parties did not negotiate the noncompete in any substantive way or in the context of a sale of a business. Additionally, the court explained that blue penciling would require the court to arbitrarily select a durational scope and pose potential breadth and clarity challenges in defining the geographical scope, which weighed in favor of not blue penciling the provision.

***Greenstar Techs., LLC v. Gouru*, No. 23-21293, 2025 WL 1311397 (D.N.J. May 5, 2025).**

INDUSTRY

AI & Emerging Technology

TAKEAWAY

To survive a motion to dismiss, the plaintiff has the burden to describe with particularity the trade secret(s) that the defendant allegedly misappropriated. In *Greenstar Technologies*, the plaintiffs described their computing-based trade secrets too broadly. In its decision, the court provides helpful guidance on how to describe trade secrets with sufficient detail.

DETAILS

Procedural Posture: The defendants' motion to dismiss.

Factual Background: The plaintiffs, Greenstar Technologies and Blue Surge Technologies, are New Jersey-based businesses engaged in the development of the "Internet of Things" (IoT), which includes software platforms, cloud computing, and AI. The defendant, Ramakrishna Reddy Gouru, is a former employee of Pacific Controls Cloud Services, Inc. (PCCS). PCCS is an entity that provided cloud services to the plaintiffs. As an employee of PCCS, Gouru executed a confidentiality agreement with PCCS. During his time at PCCS, Gouru was involved in the development of the plaintiffs' technologies and was provided with a "super admin login" through which he could access the plaintiffs' servers. Gouru resigned from PCCS on July 19, 2023. After his resignation from PCCS, Gouru began working for the defendant LG Electronics USA, Inc. (LGEUS).

After his resignation, and between September 19, 2023, and October 6, 2023, Gouru allegedly accessed the plaintiffs' servers from his home 22 times and for over 470 hours. Additionally, on October 1, 2023, at least 31 attempts were made to access the plaintiffs' servers from an IP address at LG POWERCOMM, a subsidiary of LGEUS. During this time, Gouru allegedly downloaded the plaintiffs' files, stole the plaintiffs' trade secrets, manipulated the plaintiffs' virtual servers, and deleted source code from the plaintiffs' platform. The plaintiffs also alleged "[u]pon information and belief" that (1) LGEUS recruited Gouru to work for the company "because of his knowledge and expertise with respect to Plaintiffs' trade secrets," (2) Gouru acted on behalf of LGEUS in accessing and misappropriating the plaintiffs' trade secrets, and (3) LGEUS or its parent company are using or intend to use the misappropriated trade secrets in their business operations.

The plaintiffs filed a lawsuit alleging, *inter alia*, misappropriation under the DTSA.

Court's Decision: The defendants moved to dismiss the plaintiffs' lawsuit. The court granted the motion with respect to the plaintiffs' DTSA claim.

The plaintiffs alleged that the defendants misappropriated two of their trade secrets. First, the plaintiffs alleged the misappropriation of their "Greenstar Trade Secrets" that the plaintiffs defined as "the AI applications and IoT technology developed on behalf of Plaintiffs . . . and the related software, applications, and data." Second, the plaintiffs alleged that their IoT technology included their "revolutionary Communications Protocol" that "enabled hardware-agnostic communication protocol" and was "developed for device-to-enterprise communications with the IoT platform."

According to the court, these allegations were too broad to survive dismissal. The court explained, "[b]y defining Plaintiffs' trade secrets as the entirety of Plaintiffs' software platform, as well as generic categories, . . . Plaintiffs fail to provide the requisite specificity regarding the allegedly misappropriated information."

The court provided guidance in case the plaintiffs planned on filing an amended complaint. It said that they could, "identify the types of information Gouru downloaded, the quantity of documents Gouru downloaded, or the file names of the documents Gouru deleted or copied." It also wrote that the plaintiffs could attach documents describing their trade secrets or explain in further detail what technology the plaintiffs accuse the defendants of taking.

***Vertical Bridge REIT, LLC v. Everest Infrastructure Partners, Inc.*, No. 23-1017, 2025 WL 563752 (W.D. Pa. 2025).**

INDUSTRY

Telecommunications, Construction

TAKEAWAY

Where a plaintiff's trade secrets are alleged in the details of business contracts between a plaintiff and its customers, such as pricing information and structures, rent or licensing fees or escalators, etc., confidentiality provisions in such contracts are likely necessary to demonstrate adequate measures to protect secrecy.

DETAILS

Procedural Posture: The defendant's motion to dismiss.

Factual Background: This case involved tower companies competing in the telecommunications infrastructure industry. Vertical Bridge REIT, LLC and its subsidiaries (VB plaintiffs) own and operate towers and lease space on those towers to telecommunications tenants. The towers they own and operate usually sit on leased property, and the VB plaintiffs' ground-lease agreements with individual landlords are based on "Vertical Bridge's proprietary financial model, and other similar financial information," which, together, constitutes what the VB plaintiffs refer to as "Vertical Bridge Trade Secret Information." The Everest defendants were alleged to be in business as a tower company that was additionally engaged in tower aggregation, meaning the Everest defendants were the middlemen between the landlords and tower companies, like the VB plaintiffs.

The VB plaintiffs alleged the Everest defendants had "induced … Vertical Bridge's Landlords … to share valuable, proprietary, and confidential financial information in their ground leases with Everest." The Everest defendants moved to dismiss the claims in the second amended complaint (SAC) because the VB plaintiffs had not alleged facts showing that the Vertical Bridge Trade Secret Information were, in fact, kept secret.

In the SAC, the VB plaintiffs alleged their trade-secret protected information included site-specific rent amounts, licensing fees, escalator amounts, and rent sharing from tower tenants, all of which were developed with the VB plaintiffs' proprietary financial model and was specific to a particular site. Because customer lists, pricing information, and marketing techniques may constitute a trade secret, the court was satisfied that the information could constitute trade secrets and was defined with enough specificity for the Everest defendants to determine which information the VB plaintiffs were targeting for protection in this suit.

Court's Decision: A main focus of the court's rulings was the content of the VB plaintiffs' lease contracts with the landlords that contained the alleged Vertical Bridge Trade Secret Information alleged to be exposed to the Everest defendants, and whether such contracts contained confidentiality provisions. The VB plaintiffs alleged that there are four different types of leases that they have executed with landlords, the differentiation among the types of leases being primarily dependent on whether and when confidentiality provisions were incorporated.

The first two types contained confidentiality clauses at their execution, and the court held this provided sufficient facts to survive summary judgment as to adequate secrecy. The third type involved confidentiality provisions added later after the execution of the original lease contract. The court held that the issue of a "gap" in the timing of confidentiality provisions still presented a question of fact for the jury on the issue of reasonable measure of adequate secrecy overall as to these landlords. However, as to the fourth type of leases, which lacked any confidentiality provisions, the court granted summary judgment, finding a lack of adequate secrecy to afford trade secret protection.

FOURTH CIRCUIT

Fourth Circuit

***Samuel Sherbrooke Corporate, LTD v. Mayer et al.*, ___ F.4th ___, No. 24-2173, 2025 WL 3210813 (4th Cir. 2025).**

INDUSTRY

Insurance & Reinsurance

TAKEAWAY

The Fourth Circuit provided guidance on the "reasonable measures" standard for DTSA trade secrets misappropriation claims. The court relied on Ninth Circuit case law to hold that, at the pleadings stage, allegations that an employee signed a confidentiality provision are sufficient to plausibly allege that a company took "reasonable measures" to keep information secret under the DTSA.

DETAILS

Procedural Posture: Appeal of a Rule 12(c) judgment on the pleadings dismissing a DTSA trade secrets misappropriation claim.

Factual Background: The plaintiffs, Sherbrooke, a captive insurance company, which insures nursing homes, and its majority shareholder, Samuel Goldner, sued (1) Sherbrooke's minority shareholders, Gabriel Mayer and Joseph Queen; (2) Sherbrooke's Chief Technology Officer (CTO), Beau Walker; and (3) a competing insurance company, Helios Risk Solutions, LLC. The plaintiffs alleged that Walker designed, created, and maintained a propriety software for Sherbrooke's use that allowed Sherbrooke to use medical records to project and predict insurance risk-pricing for Sherbrooke's nursing home clients.

Mayer, Queen, and Walker were all subject to employment contracts that contained a confidentiality provision prohibiting employees from disclosing, using, or exploiting confidential information for any purposes other than for Sherbrooke's benefit. Additionally, the employment contracts also contained an invention provision that assigned Sherbrooke ownership of any inventions or developments created during employment that relate to Sherbrooke's business.

According to the complaint, Mayer and Queen formed a competing insurance company that also provided insurance to nursing homes. Shortly after its formation, Walker joined Mayer and Queen's competing company. The three allegedly used Sherbrooke's propriety software to operate the new insurance company in direct competition with Sherbrooke.

Lower Court Decision: The plaintiffs asserted a claim for trade secrets misappropriation under the DTSA in the US District Court for the Eastern District of North Carolina. The defendants moved for judgment on the pleadings under Rule 12(c), and the district court granted the motion and dismissed the DTSA claim. The lower court concluded that the plaintiffs failed to plausibly allege it took reasonable measures to protect the secrecy of the proprietary software. Sherbrooke appealed to the Fourth Circuit.

Court's Decision: Applying *de novo* review, the Fourth Circuit reversed the district court's dismissal of the DTSA claim. To begin, the court explained that information is a trade secret under the DTSA if its owner has taken "reasonable measures" to keep the information secret.

Sherbrooke argued that it had sufficiently pleaded the secrecy element because it pled that the defendants were required to sign the employment contract, which included the confidentiality and inventions provisions. Sherbrooke contended that, under the employment contract, the proprietary software was treated as confidential information. Thus, Sherbrooke asserted that the complaint adequately alleged that the proprietary software was Sherbrooke's confidential property under the employment contract, which was a reasonable measure intended to keep it secret. The Fourth Circuit agreed.

The Fourth Circuit rejected the defendants' arguments to the contrary. First, the defendants argued that the complaint failed to connect the proprietary software to the confidentiality provision because the complaint failed to allege whether the proprietary software used an open-source code. The court rejected this argument, reasoning that Sherbrooke did not need to disprove a potential defense to survive the pleadings stage; Sherbrooke only had to plausibly allege that the propriety software was covered by the confidentiality provision, which was a reasonable measure intended to keep information secret.

Second, the court rejected the defendants' argument that a confidentiality provision alone is not sufficient, as a matter of law, to demonstrate reasonable measures to maintain secrecy. The court relied on a Ninth Circuit decision to conclude that, at the pleadings stage, allegations that an employee signed a confidentiality provision is — on its own — sufficient to plead "reasonable measures" to keep information secret under the DTSA. The court recognized that plaintiffs often allege that they did more than simply require a signed confidentiality agreement to maintain secrecy, but the court expressly declined to require plaintiffs to plead more to survive the Rule 12 stage.

Finally, the court concluded that Sherbrooke plausibly alleged that the defendants misappropriated the proprietary software. The court reasoned that when all the factual allegations are considered together — Walker created the proprietary software for Sherbrooke, the three individual defendants were Sherbrooke insiders, the defendants formed a competing insurance company, and then the defendants allegedly actively used the proprietary software for their own, competing company — the complaint plausibly alleges that the defendants misappropriated the proprietary software. As such, the court reversed the order dismissing the DTSA claim and remanded to the district court for further proceedings.

***Sysco Mach. Corp. v. DCS USA Corp.*, 143 F.4th 222 (4th Cir. 2025).**

INDUSTRY

Consumer Products

TAKEAWAY

A plaintiff must define its trade secrets with precision and demonstrate reasonable efforts to maintain secrecy among manufacturer and distributor relationships. After demonstrating the existence of a valid trade secret, a plaintiff must allege acquisition, disclosure, or use of a trade secret by improper means or without consent.

DETAILS

Procedural Posture: Appeal of order granting of the defendant's motion to dismiss.

Factual Background: Sysco Machinery Corporation, a Taiwanese manufacturer of rotary die cutting machines, partnered with North Carolina distributor DCS USA Corporation from 2017 to 2021 to sell customized equipment in the United States. Sysco alleged that a group of Sysco employees left in 2021 to form a competitor company called Cymtek Solutions, Inc. and allegedly misappropriated confidential files and machine layouts. Sysco also claimed that Cymtek used the trade secrets to manufacture counterfeit machinery, which Cymtek then sold to potential and existing Sysco customers.

Sysco sued repeatedly in US courts over this conduct. The Eastern District of North Carolina dismissed Sysco's claims against DCS under Rule 12(b)(6), denied post-judgment leave to amend, and the Fourth Circuit affirmed.

Court's Decision: The plaintiff's core claims were misappropriation under the DTSA and North Carolina's Trade Secrets Protection Act (TSPA). The issues centered on whether Sysco plausibly alleged (1) the existence of valid trade secrets and (2) misappropriation by DCS through acquisition, disclosure, or use via improper means or without consent. The Fourth Circuit held the complaint failed on both prongs.

First, the Fourth Circuit held that Sysco's trade secret definitions were so sweeping and conclusory that "nearly its entire business" would be considered a trade secret. The court emphasized that it was impossible not only for DCS to know what it was accused of misappropriating, but also for the court to assess whether Sysco took reasonable measures to protect the information and whether the information derived independent economic value from its secrecy. Sysco's trade secret definition was further flawed because it included unredacted technical drawings deposited at the US Copyright Office that were available for public inspection.

Second, the court held that Sysco did not plausibly allege misappropriation by improper or unlawful means. The complaint failed to explain how DCS acquired, disclosed, or used Sysco's trade secrets, particularly given that DCS appeared to have lawfully obtained the information as part of the parties' ordinary manufacturer–distributor relationship.

In affirming the lower court's dismissal, the court emphasized the importance of pleading-stage barriers to prevent quasi-torts like trade secret misappropriation from casually superseding contract-based arrangements.

***Aarow Electrical Solutions v. Tricore Systems, LLC, et al.*, 2025 WL 660227 (D. Md. Feb. 27, 2025).**

INDUSTRY

Construction, Private Companies

TAKEAWAY

At the summary judgment stage, courts will deny premature challenges to whether trade secrets have been identified with sufficient particularity under the DTSA/Maryland Uniform Trade Secrets Act (MUTSA) where discovery is ongoing and the asserted trade secrets are still being refined, but plaintiffs must ultimately identify the trade secrets with sufficient particularity. Aiding-and-abetting misappropriation is not a cognizable cause of action under either the DTSA or the MUTSA.

DETAILS

Procedural Posture: The case came before the District of Maryland on the defendants' motion for summary judgment.

Factual Background: The plaintiff Aarow Electrical Systems brought four counts: DTSA misappropriation, MUTSA misappropriation, and aiding-and-abetting liability under both statutes. Aarow alleged that Tricore Systems, National Technology Integrators, and individual defendants misappropriated Aarow's trade secrets and confidential business information to divert a portion of Aarow's business.

Court's Decision: The court denied the summary judgment motion without prejudice as to the DTSA and MUTSA claims, holding the motion premature because discovery was ongoing and Aarow had supplemented its trade secret disclosures after the motion was filed. The court emphasized, however, that at the summary judgment stage, a plaintiff must identify its trade secrets with "sufficient detail and precision" to allow the factfinder to distinguish trade secrets from merely confidential or public information. Sweeping descriptions such as "all business processes," "all business records," or generic references to large categories and synergistic compilations will not suffice.

The court granted summary judgment on the aiding-and-abetting counts. As to the DTSA, the court followed the growing consensus that the statute does not create a private right of action for aiding and abetting; each defendant must be shown to have individually misappropriated at least one trade secret. As to the MUTSA, the court held that aiding-and-abetting liability is not available because the statute's definition of "misappropriation" requires acquisition, disclosure, or use by the defendant, and MUTSA's preemption provision makes the statute the exclusive civil remedy for trade secret misappropriation in Maryland. Allowing aiding-and-abetting theories outside the statutory text would conflict with that exclusivity.

***Xona Sys., Inc. v. Hyperport, Inc.*, Civ. No. 24-3401-BAH, 2025 WL 1332748 (D. Md.).**

INDUSTRY

AI & Emerging Technologies, Venture Capital & Emerging Businesses

TAKEAWAY

A nonsolicitation clause that prevented former employees' use of their former employer's trade secrets to solicit customers for one year was not unenforceable under Virginia law.

DETAILS

Procedural Posture: The defendants' motion to dismiss.

Factual Background: Xona Systems brought suit alleging that its former executives, CTO Adrian Withy and VP of Global Sales Randy Cheek, founded and ran competing startup Hyperport while still at Xona, took and used Xona's confidential information and trade secrets (including customer lists, pricing, and product know-how) and, shortly after leaving, solicited Xona prospects using that information. Xona brought an action alleging that the defendants' "incorporation of Hyperport violated the [Confidentiality Agreement] and Mutual Non-Disclosure Agreements ("NDA") they [had] signed as a condition of their employment," and moreover, the "Individual Defendants also apparently used Xona information they [had] wrongfully retained for the benefit of Hyperport's start up and development."

Xona brought claims of breach of contract (Count 1), violation of the DTSA (Count 2), violation of the MUTSA (Count 3), tortious interference with contract (Count 4), breach of fiduciary duties (Count 5), aiding and abetting breach of fiduciary duties, employee privacy and noncompete agreement (Count 6), and civil conspiracy (Count 7). Pending before the court was the defendants' motion to dismiss Counts 1, 4, and 7.

Court's Decision: The court denied the defendants' motion to dismiss, holding that Xona's nonsolicitation clause is not facially overbroad or ambiguous and may be enforceable under Virginia law selected by the parties. The court found that the clause's one-year duration and absence of a geographic limit are not unreasonable given its narrow focus on prohibiting solicitation only when using Xona's trade secrets, and it concluded that further factual development is needed to assess reasonableness and enforceability.

***IQ Solutions, Inc. v. Manhattan Strategy Group, LLC*, No.: SAG-24-03201, 2025 WL 1331705 (D. Md. May 7, 2025).**

INDUSTRY

Health Care, Life Sciences

TAKEAWAY

Under Maryland law, courts will "blue-pencil" restrictive covenants to excise overbroad clauses that are severable without adding or rearranging other language but will not reform facially overbroad restrictive covenants that cannot be narrowed without adding limiting language or simply removing the offending language. The case also provides another example where a court dismissed a trade secrets claim partially for failing to identify sufficiently the trade secrets.

DETAILS

Procedural Posture: The defendants' motion to dismiss.

Factual Background: The plaintiff, IQ Solutions, Inc. (IQS), and the defendant, Manhattan Strategy Group, LLC (MSG), are competing health care consulting firms. The co-defendant, Shannon Loomis, joined IQS in 2017 to serve as the project coordinator for a government contract with the Substance Abuse and Mental Health Services Administration (SAMHSA). Loomis resigned in March 2024, shortly before SAMHSA solicited bids for a follow-on contract. Prior to resigning, Loomis allegedly downloaded various files related to the SAMHSA contract, including documents with limited exclusive access. Loomis joined MSG and became its project director to submit a bid for the SAMHSA contract. Loomis allegedly also solicited IQS' contract partner to work with MSG for the upcoming bid. MSG won the SAMHSA contract. IQS sued MSG and Loomis for breach of restrictive covenants, misappropriation of its trade secrets under the DTSA and MUTSA, and three tort-based claims.

Court's Decision: The court partially granted the defendants' motion to dismiss the breach of restrictive covenants claim, holding that the "Employee, Consultant, and Contractor" provision was unenforceable and could not be blue-penciled, but denied the dismissal as to the client nonsolicitation covenant. The court also granted the motion to dismiss the plaintiff's DTSA and MUTSA claims.

On the breach of contract claim, the court considered the client nonsolicitation covenant and employee, consultant, and contractor nonsolicitation covenant that Loomis signed with IQS at the beginning of her employment.

- The court recognized that the client nonsolicitation covenant was overbroad because it covered "prospective clients," and anyone Loomis merely became acquainted with. The court noted that the claim need not be dismissed, however, because the court could apply the blue-pencil doctrine and revise the nonsolicitation clause to limit the scope of the provision.
- The court held, however, that the "Solicitation of Employees, Consultants, or Contractors" provision was "overbroad and unenforceable on its face" because it limited Loomis' future conduct without tying the restriction to whether Loomis ever interacted with those individuals or entities while employed by IQS. The court could not save this provision through the blue-pencil doctrine and thus dismissed this portion of the claim.

On the DTSA and MUTSA claims, the court held that IQS failed to plead with particularity what information allegedly taken by Loomis meets the definition of a trade secret, what efforts IQS took to maintain the confidentiality of the alleged trade secrets, or that MSG misappropriated or used any trade secrets.

- The court considered the allegation that Loomis downloaded files prior to her resignation and "the file names of documents might provide sufficient information for a person with greater familiarity to understand the file's contents," but alone, this was insufficient for the court to understand the nature of the documents taken or whether they plausibly contained trade secrets.

– Thus, the court dismissed the DTSA and MUTSA claims.

***JET Systems, LLC v. J.F. Taylor, Inc.*, No. CV DKC 24-1628, 2025 WL 2659842 (D. Md. Sep. 17, 2025).**

INDUSTRY

National Security

TAKEAWAY

A plaintiff alleging trade secret misappropriation and copyright infringement claims must plead substantive facts beyond conclusory allegations made "on information and belief" to support claims of the defendant's misuse of trade secrets and copyright infringement.

DETAILS

Procedural Posture: The defendant's motion to dismiss.

Factual Background: The plaintiff JET Systems developed its proprietary Adaptive Layer Framework (ALF) software products, used by the US Navy. JET considered its computer source code a trade secret. The defendant, J.F. Taylor, Inc. (JFTI) had a contract with the US Navy to develop prototype computers for use in air combat. As part of the contract, the US Navy asked JFTI to issue a purchase order to JET for its baseline ALF software products. JET delivered its ALF software directly to the US Navy, as required by the purchase order. Thereafter, JET and JFTI disputed the completeness of the software products that JET delivered, and following a "letter of concern" from the US Navy, JFTI terminated the purchase order for cause. JET demanded return of the ALF software because the purchase order was incomplete, but a five-month period transpired before JFTI returned the software. JET alleged that JFTI made unauthorized copies of its software and misappropriated trade secrets and that JFTI wrongfully retained and used the software. JET sued JFTI, bringing claims of copyright infringement, trade secret misappropriation under the DTSA and MUTSA, conversion, and breach of contract.

Court's Decision: The court granted the defendant's motion to dismiss the copyright infringement, trade secret misappropriation, and conversion claims. The court denied the defendant's motion to dismiss the breach of contract claim.

The court dismissed the copyright infringement claim, agreeing with the defendant that the plaintiff's claim rests on "JETS's single, unsupported conclusion" that the defendant made "unauthorized copies" of the software during the five-month period prior to returning the ALF software. The court explained that the plaintiff's complaint relied heavily on allegations made on "information and belief" without alleging substantive facts, such as subsequent misuse of the software by the defendant.

Likewise, the court dismissed the misappropriation of trade secrets claims brought under the DTSA and MUTSA and the conversion claim. The court again recognized that the plaintiff relied heavily on "information and belief" pleading to allege that the defendant misused its trade secrets because the defendant's control and possession of the ALF software for a five-month period implied that it was copying the computer source code during that time. But the court disagreed, holding that such an inference was not justified based on the plaintiff's bare-bones allegations. The court denied the motion to dismiss the breach of contract claim.

***CRH Eastern v. Berastain*, 23 CVS 039534-590, 2025 WL 399385 (N.C. Super. Ct. Feb. 4, 2025).**

INDUSTRY

Construction

TAKEAWAY

CRH Eastern articulates the pleading requirements to state a claim under the North Carolina Trade Secrets Protection Act (NCTSPA), N.C.G.S. § 66-152. General descriptions of trade secrets are insufficient. For compilation trade secrets, under North Carolina law, plaintiffs have the burden of describing in detail the information included in such compilations as well as the plaintiff's investment in formulating the trade secret.

DETAILS

Procedural Posture: The defendants' motion to dismiss.

Factual Background: The plaintiff, CRH Eastern, LLC (formerly known as CTS Metrolina), provides emergency restoration and repair services to owners of commercial and residential properties. CRH manages its jobs through a platform called iRestore. When CRH receives a job from a customer, it posts the project information on iRestore, which then assigns the project to a subcontractor.

In March 2022, CRH purchased the assets of Metrolina Restoration, LLC, a company owned by the defendants, Dustin Berastain and Timothy Moreau. As part of the deal, Berastain and Moreau were offered positions as co-presidents of CRH, which they accepted. Both signed acquisition and employment agreements that contained noncompetes, nonsolicits, and confidentiality provisions.

Subsequently, Berastain and Moreau managed and operated CRH. Their responsibilities included entering agreements on behalf of CRH, managing relationships with subcontractors and vendors, and awarding commissions to employees. Berastain and Moreau, however, became disenchanted with their roles. This led to a strained relationship between the defendants and CRH, eventually leading to the defendants' termination in October 2023.

After leaving CRH, Berastain and Moreau started IER Holding, LLC, and its subsidiary, Inkwell Emergency Response, a company that also provided emergency restoration and repair services for commercial and residential properties. Days later, CRH found many jobs were deleted from iRestore. Moreover, CRH had two employees who wiped their company-provided laptops before their departures.

In December 2023, CRH confirmed that Berastain and Moreau were using Inkwell to compete against it. One of CRH's subcontractors forwarded to CRH a job confirmation email it had received from iRestore. The job was for one of CRH's largest clients, and a former employee who resigned shortly after CRH terminated Berastain created the job. The subcontractor, however, could not locate the job on iRestore. CRH learned that the former employee created the job on behalf of Inkwell.

This led CRH to sue Berastain, Moreau, and Inkwell, among others. CRH alleged that the evidence indicated that the defendants were using CRH information or disclosing such information to unauthorized persons on behalf of Inkwell. CRH brought several state-law claims, including a claim under the NCTSPA.

Court's Decision: CRH alleged three categories of trade secrets:

- "Lists of customers, along with detailed information about each such as contract information, preferences and requirements for the work performed for them, terms of the contracts with these customers, pricing and discounts offered to these customers, and other information that enables [CRH] to provide the right services at the right prices to these customers."
- "Lists of subcontractors and vendors, along with detailed information about each such as contact information, preferences and requirements for them to perform services for [CRH's] customers, terms of the contracts with the subcontractors and vendors, pricing and discounts, and other information that enables [CRH] to engage its subcontractors and vendors under the right conditions in order to serve its customers."
- "Business operation information, which includes how [CRH] sells and markets its services to customers, how it staffs jobs to serve customers effectively and efficiently, its operational structure, business opportunities it intends to pursue, and similar information."

Under *Krawiec v. Manly*, 811 S.E.2d 542 (N.C. 2018), to state an NCTSPA claim for a "compilation" trade secret, such as a list of customers or vendors, a plaintiff must provide sufficient "detail about these ideas, concepts, strategies, and tactics sufficient to put defendants on notice as to the precise information allegedly misappropriated." A complaint cannot provide a general description.

The court found the first two categories had sufficient particularity to allege a compilation-based trade secret under the NCTSPA. It reasoned that CRH satisfied the standard laid out in *Krawiec* because CRH "detail[ed] the information included" in the lists and alleged that the "lists were compiled at great expense and refined over the years."

The court, however, dismissed CRH's NCTSPA claim with respect to the third category, reasoning that it was "too vague to put the [] Defendants on notice of the specific trade secrets that they are accused of misappropriating."

***United Therapeutics Corp. v. Liquidia Tech, Inc*, 2025 NCBC 37 (N.C. Bus. Ct. Jul. 29, 2025).**

INDUSTRY

Life Sciences, Health Care

TAKEAWAY

Documents combining regulatory strategy, clinical design, pharmacokinetics, and US Food and Drug Administration (FDA) communications that amount to curated, development-stage "roadmaps" for drug approval are potentially protectable trade secrets, even where portions are publicly available. While reasonableness of secrecy measures is a fact-intensive inquiry, policies, NDAs, access controls, and cultural expectations can collectively suffice to reach a jury, notwithstanding evidence of informal practices.

DETAILS

Procedural Posture: The defendants' motion for summary judgment.

Factual Background: United Therapeutics (UTC) and its competitor, Liquidia, are biopharmaceutical companies that develop therapies for pulmonary arterial hypertension (PAH). UTC alleged that Dr. Robert Roscigno, a former UTC executive who later joined Liquidia, retained and used a collection of UTC documents related to the development of inhaled treatment to accelerate Liquidia's PAH program.

After discovering UTC documents on Liquidia systems during Delaware patent litigation, UTC sued in North Carolina state court for claims arising under the NCTSPA and the Unfair and Deceptive Trade Practices Act (UDTPA). Following amendments and remand, Liquidia moved for summary judgment on the NCTSPA and UDTPA claims. The North Carolina Business Court denied the motion.

Court's Decision: The court denied the defendants' motion for summary judgment because (1) there was sufficient evidence in the record to support that the documents were a protectable trade secret and (2), even though there was a question of whether the plaintiff's efforts to maintain secrecy were adequate, there was enough evidence to submit the question to the jury to determine reasonableness.

As to the existence of trade secrets, the court held that there was sufficient evidence for a fact finder to conclude that specific documents in Roscigno's possession were protectable trade secrets in and of themselves but also as compilation trade secrets and process trade secrets. The court determined that a factfinder could find that UTC identified individual trade secrets with sufficient particularity because UTC had specified categories of trade secret information, identified in its complaint and discovery responses bates-labeled documents containing trade secrets, and provided expert and Rule 30(b)(6) testimony highlighting trade secret information within financials, regulatory strategy, formulations and PK data, clinical protocols, and FDA interactions. On the plaintiff's compilation theory, the court emphasized that a curated set of competitively advantageous materials selected by a departing employee can constitute a compilation trade secret, even where some component information is public, if the collection contains non-public insights with commercial value to the accused user. The court found evidence that Roscigno accessed, organized, and repeatedly used the UTC documents that related to developing PAH treatment while leading Liquidia's PAH program, supporting its value to and use by Liquidia.

***Brimer v. MDElite Laser & Aesthetic, LLC*, 770 F. Supp. 3d 876 (E.D.N.C. 2025).**

INDUSTRY

Health Care, Life Sciences

TAKEAWAY

Under Minnesota law, a complaint asserting claims for trade secret misappropriation adequately supports the pleading of misappropriation with factual assertion that the accused party refuses to return equipment and confidential materials despite multiple written contractual demands for their return. Such conduct, the court held, raises the possibility that the equipment was being used to generate further confidential information sufficient to proceed to discovery to test such allegations.

DETAILS

Procedural Posture: The plaintiff and counterclaim defendant's partial motion to dismiss.

Factual Background: The plaintiff, Crystal Brimer, entered into a consulting agreement with the defendant, MDElite, in which Brimer was to provide various consulting services to MDE, including clinical strategy development, regulatory interactions, and clinical trial oversight. Additionally, MDE loaned Brimer four laser devices to assist in her consulting services, which use thereof would involve generating alleged confidential information. The consulting agreement also required that all "Work Product" derived by Brimer through her consulting work would belong exclusively to MDE. Ultimately, disputes arose between Brimer and MDE because of Brimer's poor performance, her refusal to return the loaned devices after the termination of the agreement, and MDE's belief that Brimer disclosed work product to third parties. Brimer filed a lawsuit alleging breach of contract and seeking declaratory judgment or monetary damages. MDE filed counterclaims including breach of contract, promissory estoppel, unjust enrichment, conversion, civil theft, replevin, and misappropriation of trade secrets. Brimer moved to dismiss four of MDE's counterclaims, including claims for misappropriation of trade secrets.

Court's Decision: The trade secret dispute at issue in Brimer's motion to dismiss was whether MDE had adequately alleged a claim for trade secret misappropriate under the Minnesota Uniform Trade Secrets Act (MUTSA). Brimer argued that MDE had not adequately alleged a claim under MUTSA because it failed to allege the existence of a trade secret and that she used and disclosed a trade secret to others.

In analyzing Brimer's motion to dismiss, the court found the following:

1. MDE adequately alleged that the data and information related to patient experiences with the devices, which Brimer generated, constituted trade secrets. The court noted that MDE described the trade secrets with enough detail to infer more than a mere possibility of misconduct. The

court also found that the confidentiality provision in the consulting agreement demonstrated the trade secret nature of the confidential information that the parties agreed belonged to MDE.

2. The court also found that MDE adequately alleged that Brimer misappropriated its claimed trade secrets. MDE has alleged, on information and belief, that Brimer had shared information with MDE's competitors, and Brimer argued that "mere fears" of misappropriation are inadequate at the pleading stage. However, in a "close call," the court found MDE's allegations that Brimer retained MDE's equipment and continued to use them to create confidential work product, which she had no right to do after the termination of the agreement, were adequate to allege misappropriation under the MUTSA, and proceed to discovery.

As a result, the court denied Brimer's partial motion to dismiss as to the MUTSA claim.

***Court of Masters Sommeliers Americas v. Broshious*, No. 2:25-cv-05255-RMG, 2025 WL 2877735 (D.S.C. Oct. 8, 2025).**

INDUSTRY
Beverage & Food

TAKEAWAY
The court found that the plaintiff was legally justified in reaching out to one of the defendants' students to stop the defendants' misappropriation.

DETAILS

Procedural Posture: The plaintiff's motion to dismiss the defendants' amended counterclaims with prejudice.

Factual Background: The plaintiff, Court of Master Sommeliers, Americas (CMSA), administers confidential, proprietary examinations and requires test-takers to agree not to disclose exam content. It also owns registered marks associated with its programs and credentials.

The defendant, Ashley Broshious, earned CMSA certifications and later founded How to Drink Wine (HTDW), with the goal of providing exam preparation services to help students pass CSMA exams. The defendants used CMSA's marks to market their services and, according to CMSA, disclosed CMSA proprietary and trade secret information.

CMSA sued the defendants alleging, *inter alia*, trademark infringement, unfair competition, trade secret misappropriation (federal and state), and breach of contract (against Broshious).

The defendants filed counterclaims for intentional interference with contract relations and breach of contract. The defendants' intentional interference claim alleged that CMSA requested the defendants' client list, and subsequently contacted at least one HTDW student, advising the student to terminate her contract with HTDW because HTDW's services allegedly violated CMSA's intellectual property rights. The student later stopped working with HTDW, informing Broshious that her decision was because of CMSA's allegations.

The defendants claimed lost fees and harm to their business, alleging it was improper for CSMA to interfere with HTDW to prevent continued use and dissemination of CSMA's trade secrets, i.e., CSMA's confidential exam materials. CMSA moved to dismiss the counterclaims. The US District Court for the District of South Carolina, in an order by Judge Richard M. Gergel, granted the motion and dismissed the counterclaims with prejudice.

Court's Decision: Because CMSA's actions were motivated by a legitimate business purpose and were justified under South Carolina law, the court dismissed the defendants' counterclaim for intentional interference with contract relations.

Under South Carolina law, tortious interference with contract requires a claimant to prove (1) a valid contract, (2) the defendant's knowledge of it, (3) intentional procurement of its breach, (4) *absence of justification*, and (5) resulting damages. Here, the court emphasized the "absence of justification" element, ultimately concluding that CMSA "acted within its legal right to stop" the alleged misappropriation. The court emphasized that "federal and state trade secret law necessitates that for information to be considered a trade secret, the party claiming as much *must employ all reasonable efforts to protect the secrecy of that information*." Thus, CMSA's communication to an HTDW student to prevent perceived misappropriation and infringement was a *legally justified* step consistent with protecting its rights.

BDO USA P.C. v. Ankura Consulting Group, LLC, **3:24-cv-179 (E.D. Va. Oct. 28, 2025).**

INDUSTRY

Private Companies, Consulting Services

TAKEAWAY

The Virginia Uniform Trade Secrets Act (VUTSA) "does not provide 'blanket preemption to all claims that arise from a factual circumstance possibly involving a trade secret.'" Thus, because other claims are not entirely predicated on the alleged trade secrets misappropriation, VUTSA preemption does not apply. As to Virginia business conspiracy, Virginia common law "recognizes a cause of action against those who conspire to induce a breach of a contract, even when one of the alleged conspirators is a party to the contract."

DETAILS

Procedural Posture: The plaintiff, BDO USA, P.C., is an accounting and professional services advisory firm. The defendants are Ankura Consulting Group, LLC, Ankura's CEO Kevin Lavin, and Phuoc Vin Phan. The defendants moved to dismiss all claims.

Factual Background: BDO alleged that Phan, its former Healthcare Transaction Advisory Services (TAS) leader, conspired with Lavin to execute a "lift-out" of BDO's Healthcare TAS practice and transfer that practice to Ankura, a direct competitor. BDO alleged that beginning in mid-2023, Phan and Lavin conspired to recruit BDO personnel. Lavin communicated offers and assurances (including indemnification) to BDO employees, despite concerns regarding their duties and obligations to BDO. In one instance, BDO alleged that Levin rescinded a job offer to a former BDO employee after "expressing his distress that employment at Ankura may violate his contractual obligations to BDO."

In late December 2023, Ankura sent Phan a "Good Leaver" checklist guiding his departure. The checklist advised Phan to "use methods of voice communication rather than written communication, and to take notes about conversations with staff at BDO for Ankura to use 'should we get into litigation.'" Phan submitted his resignation to BDO on January 9, 2024. The next day, BDO discovered that Phan had transferred 1,715 files — about 12.5 GB of confidential data — from his BDO laptop to a personal device and had attempted to exfiltrate an additional 1.2 GB. BDO alleged that, of the 11 team members who worked for the TAS practice from January 5-12, 2024, seven of them had resigned. By mid-February 2024, all seven had joined Phan at Ankura.

BDO sued Ankura, Phan, and Levin alleging, *inter alia*, violations of the DTSA, violations of the VUTSA, tortious interference with Phan's employment agreement, unjust enrichment, breach of contract, and breach of fiduciary duty.

Court's Decision: Motion to dismiss denied as to all claims.

As to the VUTSA claim, the defendants argued, *inter alia*, that the VUTSA preempts all the plaintiff's claims except for the DTSA claim. The court, however, emphasized that the VUTSA "does not provide 'blanket preemption to all claims that arise from a factual circumstance possibly involving a trade secret.'" Thus, because the other claims were not entirely predicated on the trade secrets misappropriation, the court concluded that the VUTSA preemption did not apply.

As to the statutory and common law conspiracy claims, BDO alleged that "'Phan hatched a plan to leave BDO and take the Healthcare TAS practice—its employees, clients, and its confidential information and trade secrets lock stock and barrel,' actions in which 'Ankura and Lavin were willing partners.'" The defendants argued that Phan, as a party to his own employment agreement with BDO, could not plead an allegation of conspiracy based on the alleged tortious interference. The court noted that Virginia common law "recognizes a cause of action against those who conspire to induce a breach of a contract, even when one of the alleged conspirators is a party to the contract." Thus, the court declined to dismiss the conspiracy claims.

***Southern Tr. Mortg., LLC v. Movement Mortgage, LLC*, Civil No. 2:24-cv-653, 2025 WL 1447379 (E.D. Va. May 20, 2025).**

INDUSTRY

Private Companies, Mortgage Lending

TAKEAWAY

Mere retention of confidential materials by a departing employee, without evidence showing use by or disclosure to the new employer, is insufficient to plausibly allege a DTSA claim. Furthermore, materials being returned promptly can undermine inferences of misappropriation. Finally, the DTSA does not recognize aiding-and-abetting liability; thus, each defendant must have individually misappropriated at least one trade secret.

DETAILS

Procedural Posture: The defendant's motion to dismiss.

Factual Background: Southern Trust Mortgage and Movement Mortgage are competing residential mortgage lenders. Southern Trust sued Movement after loan officer Grace White resigned, allegedly retained company documents on a USB drive, and solicited Southern Trust customers to move to Movement before resigning. Southern Trust initially sued White and Movement, later dismissing White with prejudice and filing an amended complaint against Movement alone.

Movement moved to dismiss. The court granted the motion, dismissing the DTSA claim with prejudice and declining supplemental jurisdiction over the state-law claims, which were dismissed without prejudice.

Court's Decision: The central DTSA question was whether Southern Trust plausibly alleged "misappropriation" by Movement based on White's retention of data, disclosure of applications of the solicited customers to Movement, and use of the applications to solicit those customers. Southern Trust also advanced a vicarious liability theory and an aiding and abetting theory premised on Movement's direction to White to solicit customers.

On misappropriation, the court held the complaint lacked sufficient factual matter to support a reasonable inference that Movement acquired, used, or disclosed Southern Trust's trade secrets. Three points were dispositive. First, White's own declaration, filed by Southern Trust, contained no mention of post-hire use or disclosure at Movement. Second, the timeline undercut the inference of use: White downloaded materials, received a cease-and-desist letter two days later, and immediately turned the USB over to Movement's legal department, which returned it to Southern Trust. Third, there was no circumstantial evidence of a benefit to Movement that could support a finding that Movement used the trade secrets.

On vicarious liability, the court concluded that the alleged solicitation using customer information occurred while White was still employed by Southern Trust, and Movement could not be vicariously liable for the actions of a non-employee. Further, the DTSA does not permit aiding-and-abetting liability. A plaintiff must show each defendant individually misappropriated a trade secret, not merely directed another to do so.

Because the court dismissed Southern Trust's DTSA claim, the court declined to exercise supplemental jurisdiction over the claims brought under Virginia state law, and dismissed the VUTSA, joint tortfeasor, and tortious interference claims without prejudice.

As to secrecy measures, the court rejected Liquidia's argument that UTC's failure to differentiate between trade secret and other confidential information was dispositive. Evidence of employee handbooks, technology policies, confidentiality and noncompete agreements, NDAs, access restrictions (locked storage, password-protected servers), and exit practices created a triable question on reasonableness, despite testimony about widespread personal thumb-drive use and an informal information security culture.

The court also denied the defendants' motion as to the UDTPA claim because it was based entirely on the plaintiff's claim for misappropriation of trade secrets.

FIFTH CIRCUIT

Fifth Circuit

***Computer Sciences Corp. v. Tata Consultancy Services LTD*, 159 F.4th 429 (5th Cir. 2025).**

INDUSTRY

AI & Emerging Technologies

TAKEAWAY

The Fifth Circuit upheld a $168 million verdict on a trade secrets misappropriation claim under the DTSA, affirming liability under the DTSA based on the contractual limits of third-party use of licensed software and recognizing that unjust enrichment damages under the DTSA cannot overlap with injunctive relief.

DETAILS

Procedural Posture: Appeal of a bench trial judgment finding trade secrets misappropriation.

Factual Background: Computer Sciences Corporation (CSC) is a software vendor that sued Tata Consultancy Services LTD (TCS), a technology and consulting services company, for trade secret misappropriation under the DTSA. CSC had long-standing license agreements with Transamerica, a non-party, that governed the use of CSC's software programs, Vantage and CyberLife. The license agreements included a 2014 Third-Party Access Addendum that allowed named consultants, including TCS, to work with CSC's software "on behalf of and solely for the benefit of" Transamerica. CSC alleged that TCS misused Vantage and CyberLife to win a $2.6 billion contract with Transamerica and develop TCS' own BaNCS platform for the US market.

After an eight-day bench trial, the US District Court for the Northern District of Texas found TCS liable for trade secrets misappropriation, ordered TCS to pay $56 million in compensatory damages and $112 million in exemplary damages, and imposed a permanent injunction that barred TCS from using CSC's trade secrets and the version of BaNCS that TCS developed using CSC's trade secrets. TCS appealed to the Fifth Circuit.

Court's Decision: On appeal, the Fifth Circuit largely affirmed the district court's rulings. TCS raised six issues on appeal in two categories: the first three issues pertained to TCS' liability under the DTSA, while the remaining three issues pertained to the remedies award.

As to the first three issues related to TCS' liability, the Fifth Circuit affirmed the lower court's rulings. The Fifth Circuit concluded that TCS' use of CSC's software programs was unauthorized under the agreements between CSC and Transamerica and that TCS acted with the requisite knowledge and willfulness to be found liable under the DTSA. The court also declined to consider whether CSC alleged its trade secrets with sufficient specificity and adopt a DTSA-specific standard given that the parties did not raise that argument below.

As to the issues related to the remedies award, the court provided helpful guidance on the structure and interaction of unjust enrichment damages and injunctive remedies under the DTSA. The court recognized that double recovery is impermissible under the DTSA, and unjust enrichment cannot duplicate either actual-loss damages or the effects of an injunction. The court clarified, however, that the DTSA does not add a separate requirement that the trade secret holder prove additional "compensable harm" beyond the defendant's gain.

Applying that reasoning to the case at hand, the court recognized that the district court's compensatory damages award overlapped, in part, with the injunction banning TCS' use of its own platform, BaNCS. The court vacated the injunction and remanded with instructions for the lower court to remove the bar on TCS' future use of the post-misappropriation BaNCS material. The Fifth Circuit ordered the lower court, however, to maintain the prohibition on TCS' use or possession of CSC's trade secrets.

As to the remaining two remedies issues, the Fifth Circuit affirmed the district court's award of exemplary damages, concluding that the 2:1 exemplary-to-compensatory ratio was within the DTSA's express statutory cap. Finally, the court also explored the reach of DTSA injunctions over related non-parties, which must comport with Rule 65(d)(2), and ordered the lower court to clarify that the scope of the injunction comports with Rule 65(d)(2) on remand.

***DeWolff, Boberg & Assocs. Inc. v. Pethick*, No. 24-10375, 133 F.4th 448 (5th Cir. Apr. 3, 2025).**

INDUSTRY

Consulting

TAKEAWAY

The Fifth Circuit affirmed summary judgment for the defendants on a misappropriation claim, emphasizing that designating broad categories of database content as "trade secrets" without identifying the specific, nonpublic items at issue is "vastly overbroad" and insufficient to create a triable fact dispute. The court also held there was no evidence of unauthorized use or disclosure, providing an independent ground for affirmance.

DETAILS

Procedural Posture: The plaintiff, DeWolff, Boberg & Associates Inc. (DB&A), appealed the district court's exclusion and summary judgment dismissal of its misappropriation claim against the defendants, Justin Pethick and the Randall Powers Company.

Factual Background: The plaintiff, a management consulting firm, hired Pethick as a regional vice president of sales in 2018, giving him password-protected access to the plaintiff's Salesforce and SharePoint databases, subject to nondisclosure and restrictive covenant agreements. In April 2020, Pethick accepted an offer from a competitor, Powers Co., while still employed by the plaintiff. After three DB&A prospects — Sechan Electronics, Arcosa Wind Towers, and Beyond Meat — engaged Powers Co., the plaintiff sued the defendants, alleging, among other claims, misappropriation of trade secrets under Texas law based on alleged use of DB&A's Salesforce data and a defense-industry compilation known as the "DOD List."

The district court excluded the plaintiff's damages expert based on the defendants' Daubert motion and granted summary judgment, concluding the misappropriation claim failed for lack of admissible damages evidence. On appeal, the plaintiff challenged the exclusion of the damages expert and the summary judgment dismissal of its misappropriation claim.

Court's Decision: The Fifth Circuit affirmed on alternative grounds, without reaching the Daubert ruling.

First, the court held that the plaintiff failed to establish the existence of a trade secret. The plaintiff identified large swaths of database content — "confidential contact information," "demographic information," historical notes, meeting notes, and opportunity documents — as its trade secrets, citing a voluminous Salesforce export and the DOD List. The court found this framing "vastly overbroad" because the plaintiff did not distinguish public from nonpublic information and did not pinpoint the particular entries or fields that were purportedly secret. As to the DOD List, the court noted that, on its face, it did not obviously contain confidential or proprietary information, and individuals listed appeared affiliated with the plaintiff, not external confidential contacts. Without specific, nonpublic items identified with clarity, the court reasoned that the plaintiff could not create a genuine dispute as to the first element of misappropriation.

Second, assuming the plaintiff had identified cognizable trade secrets, the court found that there was no evidence of unauthorized use or disclosure by the defendants. The court noted that the plaintiff's theory relied on temporal proximity between Pethick's departure and the prospects' engagements and on an email in which Pethick requested the DOD List before resigning. However, the court also noted that a forensic image of Pethick's computer did not show the DOD List, and the record lacked proof that Pethick possessed, used, or disclosed the plaintiff's alleged trade secrets in his work for the Powers Co. The court reasoned that such speculation about commercial "use" could not satisfy the third element under Texas law.

As a result of the plaintiff's failure to identify specific trade secrets and to adduce evidence of unauthorized use or disclosure, the court affirmed summary judgment for the defendants on the misappropriation claim.

***Delta Fuel Co. LLC v. McDaniel*, No. 24-cv-1755, 2025 WL 384559 (W.D. La. Jan. 30, 2025).**

INDUSTRY

Energy & Cleantech

TAKEAWAY

When a contract defines certain information as "confidential," disclosure of that information may constitute a violation of an employee's confidentiality and restrictive covenant agreements, even if that information may be publicly available. Loss of goodwill or customer relationships constitute sufficient "harm" to warrant issuance of a preliminary injunction.

DETAILS

Procedural Posture: The plaintiff, Delta Fuel, is a supplier of fuel and lubricant products and services. The plaintiff sought a preliminary injunction against the defendant, Natalie McDaniel, a former Delta Fuel employee, to prevent her from breaching the parties' Confidentiality and Restrictive Covenant Agreement.

Factual Background: While employed by Delta Fuel, McDaniel was permitted to use her company-issued cellphone for both business and personal reasons. When McDaniel left Delta Fuel she returned the cell phone, but all client contact information had been erased and transferred to McDaniel's new cell phone. The parties agreed that McDaniel provided some of that client information back to Delta Fuel.

After leaving Delta Fuel, McDaniel began working for TFS Gas, a company that Delta Fuel considers to be a competitor, a position with which McDaniel disagrees. McDaniel testified that while employed by TFS Gas, she visited a Delta Fuel customer — to whom she had previously sold Delta Fuel diesel — and convinced that customer to purchase liquefied natural gas (LNG) from TFS Gas, thus reducing the customer's need for diesel. McDaniel further testified that she facilitated an order for diesel between the same customer and TFS Gas' parent company, Texas Fuel. It was undisputed that McDaniel facilitated other orders of diesel for Texas Fuel from Delta Fuel's customer, resulting in a loss of revenue to Delta Fuel.

Court's Decision: Preliminary injunction granted. The court determined that the facts alleged were sufficient to establish a *prima facie* case that McDaniel breached her contractual obligations to not compete or solicit. Specifically, the court determined that Delta Fuel had established a *prima facie* case that McDaniel breached the non-disclosure provision of the Confidentiality and Restrictive Covenant Agreement between the parties. The court noted that "there was no conflicting testimony regarding whether McDaniel may still be in possession of some of Delta Fuel's client information." While McDaniel argued that the client information was not confidential "because it is 'nothing more than [publicly available] phone numbers for various oil and gas operators and their employees," the court noted the Agreement explicitly considered confidential "client lists; client information; [and] client source lists." The court further concluded that "Delta Fuel made a prima facie showing that it is likely that McDaniel has relied on this confidential information to make LNG sales and therefore violated the non-disclosure provision of the Agreement."

In deciding to grant a preliminary injunction, the court concluded that Delta Fuel "may lose client relationships and good will, the loss of which is not quantifiable."

***Coe v. DNOW LP*, No. 14-23-00410-CV, 718 S.W.3d 338 (Tex. Ct. App. Jun. 26, 2025).**

INDUSTRY

Construction, Energy & Cleantech

TAKEAWAY

As a matter of first impression, the Texas Uniform Trade Secrets Act (TUTSA) preempts claims that rely on the same facts as a trade secrets misappropriation claim.

DETAILS

Procedural Posture: The defendant-appellants appealed the directed verdict, and the Court of Appeals of Texas reversed in part, modified in part, rendered in part, and remanded the case back to the trial court.

Factual Background: The plaintiff-appellee, DNOW LP, sued a competitor, the competitor's owner, and 13 former employees after a mass exodus of approximately 30 DNOW employees. According to DNOW, several key employees copied confidential and trade secret materials, such as engineering drawings, internal reports, and customer rate information, to help the competitor expand into DNOW's line of business. Further, messages showed efforts to directly compete with DNOW using DNOW's pricing rates. As a result, the competitor obtained a master service agreement from DNOW's client, and as a result, several employees left to work for the competitor. DNOW increased pay and offered retention bonuses to stabilize operations, then filed suit on June 21, 2022, alleging trade secret misappropriation under the TUTSA, civil theft under the Texas Theft Liability Act (TTLA), and breach of fiduciary duty against certain senior employees. After a jury trial, the jury returned favorable findings against various defendant-appellants under all three causes of action. The trial court rendered judgment awarding DNOW actual and exemplary damages for conspiracy to misappropriate trade secrets. For breach of fiduciary duty, the trial court also ordered four former employees, and current defendant-appellants, to forfeit all compensation received from DNOW in 2022. Finally, the trial court held all 13 defendant-appellants jointly and severally liable for all DNOW's attorneys' fees.

Court's Decision: The Texas Court of Appeals held that the TUTSA preempts civil conspiracy and any other claims that rely on the same facts as trade-secret misappropriation. On TUTSA damages, the court found legally sufficient evidence only for DNOW's retention-bonus costs tied to the competitor's use of DNOW rate information to obtain DNOW's client; all other categories (lost profits, retraining, lost productivity, and recruitment) failed for lack of proof. As a result, only one individual defendant (Bo Young) remains liable for 5% of a retention bonus, with exemplary damages capped and DNOW's TUTSA attorneys' fees to be reconsidered on remand. The court reversed DNOW's TTLA verdicts entirely, holding the jury was improperly instructed on "appropriation" and that there was no evidence of the required intent to deprive. The defendants therefore prevailed on the TTLA and were entitled to their attorneys' fees. On breach of fiduciary duty, the court ruled TUTSA preempts the claims to the extent they rest on trade-secret misappropriation but not as to non-trade-secret confidential information. Because the jury was misinstructed, those fiduciary-duty claims against four former defendant managers are remanded for a new trial. Finally, the court also directed adjustments to prejudgment interest and ordered attorneys' fees and costs to be reassessed consistent with the new outcome.

Pallative Plus LLC v. A Assure Hospice, Inc.**, No. 03-23-00770-CV, 2025 WL 284920 (Tex. Ct. App. Jan. 24, 2025).**

INDUSTRY

Long Term Care & Senior Living

TAKEAWAY

An employee handbook that broadly classified communications relating to a party's business as confidential is insufficient to demonstrate that a party took reasonable measures to keep the information secret. Also, merely alleging that a party misappropriated trade secrets because the party is a competitor is insufficient to establish misappropriation of a trade secret.

DETAILS

Procedural Posture: The plaintiffs' appeal from the grant of summary judgment in favor of the defendants.

Factual Background: The plaintiff and the defendant are both hospice providers. Four employees left the plaintiff to work for the defendant. After those four employees resigned from the plaintiff, additional employees from the plaintiff resigned and several of the plaintiff's patients followed the departing staff to the defendant. The plaintiff alleges the former employee defendants and the defendants' officers misappropriated trade secrets to start the competing business.

The plaintiffs argued that the former employee defendants took client lists, client plans of care, supplier names and pricing, leasing terms, and staff compensation. The plaintiffs maintained that this information constitutes trade secrets.

Court's Decision: Under Texas law, information is a trade secret if it is not generally known or readily ascertainable by independent investigation. The court found that the plaintiffs failed to provide any evidence as to the secrecy of the information they claimed as trade secrets. The court expressly rejected the plaintiffs' assertions that an employee handbook demonstrated reasonable efforts to keep this information secret. The employee handbook broadly classified all verbal and written communications between the parties relating to the plaintiffs' business as confidential, which was not enough to establish that the plaintiffs took reasonable steps to maintain the secrecy of that information.

Also, the court held that there was no genuine issue of material fact as to whether the former employee defendants misappropriated the plaintiffs' client list or client plans of care. It is not enough to assert that a competitor misappropriated trade secrets merely because the party is a competitor. Here, the plaintiffs failed to raise a fact issue that the defendants received those patients and their protected health care information because of the former employee defendants' misappropriation as opposed to the patients' decision to transfer hospice care providers. Thus, the court found that the trial court did not err in granting summary judgment in favor of the defendants as to the trade secrets claims.

***DFW Dance Floors, LLC v. Suchil*, No. 3:22-CV-01775-N (N.D. Tex. Jul. 22, 2025).**

INDUSTRY

Construction, Consumer Products

TAKEAWAY

Under the DTSA, a request for attorney's fees based on an opposing party's alleged bad-faith misappropriation claim is not an independent cause of action. The request for attorney's fees must be sought by motion — typically under Federal Rule of Civil Procedure 54(d) — as a remedy available to the prevailing party, not pleaded as a standalone claim.

DETAILS

Procedural Posture: Cross-motions for summary judgment by the plaintiff and the defendant.

Factual Background: The plaintiff, a dance floor company, alleged that its former operations manager and his new dance company misappropriated trade secrets (a customer list and a panel manufacturing process), diverted business, and stole physical materials. The defendants counterclaimed for conversion and the TTLA based on the plaintiff's removal of panels and materials from a job site and separately asserted a counterclaim seeking attorney's fees under the DTSA for alleged bad-faith litigation.

Court's Decision: The court held that claims for attorney fees under the DTSA cannot be pursued as independent causes of action. Two core principles drove the ruling.

– The DTSA's fee-shifting provision is a remedy for the prevailing party, not a standalone claim. Section 1836(b)(3)(D) places fee awards within the statute's "Remedies" subsection and conditions them on prevailing-party status and a showing of bad faith. The court found this structure "cabins attorney's fees as a remedy," not a separate cause of action.

– Federal Rule of Civil Procedure 54(d) governs fee requests unless the substantive law makes fees an element of damages to be tried to a jury. Because the DTSA does not require proving fees as damages at trial, fee requests must be made by motion after relief is determined, rather than through a counterclaim.

Accordingly, the court granted summary judgment to the plaintiff on the defendants' DTSA fee counterclaim and dismissed it with prejudice. The court expressly noted that, if the defendants ultimately prevail and contend the plaintiff's DTSA claim was brought in bad faith, they may seek fees by a Rule 54(d) motion. Ultimately, the court granted in part and denied in part the defendants' motion on the plaintiff's claims. The court also granted in part and denied in part the plaintiff's motion on the defendants' counterclaims, including granting summary judgment on the defendants' counterclaim for attorney's fees based on bad faith under the DTSA.

***Alexandra Lozano Immigration Law, PLLC v. Meneses Law Firm PLLC*, 2025 WL 606970 (S.D. Tex. Feb. 25, 2025).**

INDUSTRY

Private Companies

TAKEAWAY

Under the TUTSA, common-law tort claims based on the alleged misuse of confidential business information, such as unfair competition and conversion or misappropriation of confidential information, are preempted, even when pleaded in the alternative to a TUTSA claim. Courts increasingly follow the "majority approach" that preemption extends to claims premised on unauthorized use of information whether or not it ultimately qualifies as a statutory "trade secret."

DETAILS

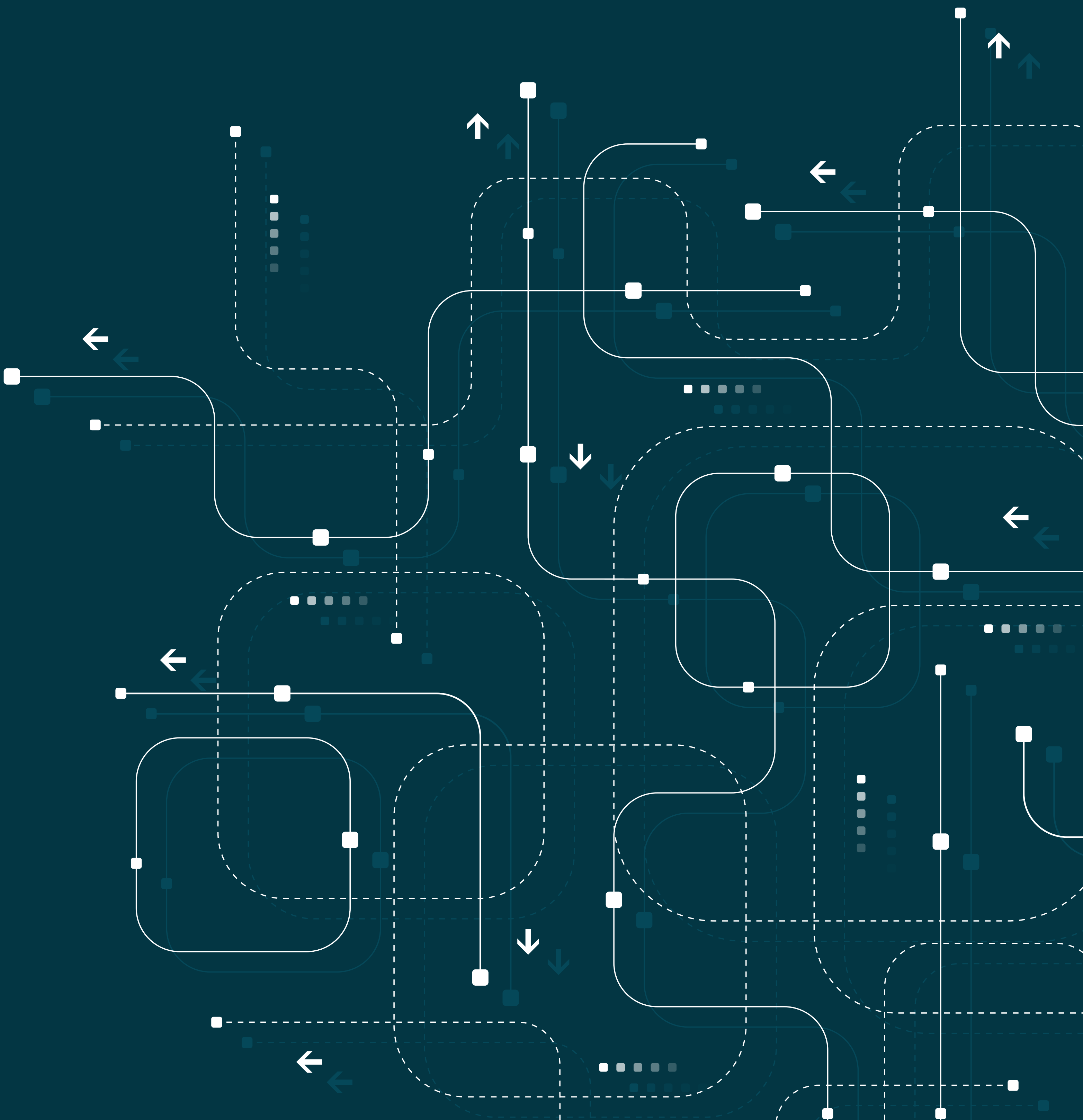
Procedural Posture: The case came before the Southern District of Texas on two motions: Meneses Law's Rule 12(b)(6) motion to dismiss Alexandra Lozano Immigration Law's (ALIL) common-law tort claims — unfair competition (Count 5) and misappropriation or conversion of confidential information (Count 6) — as preempted by the TUTSA; and ALIL's motion to dismiss Meneses Law's counterclaims as redundant. The court granted Meneses Law's motion, dismissing Counts 5 and 6, and denied ALIL's motion to dismiss as moot after Meneses Law filed amended counterclaims removing the challenged counts.

Factual Background: ALIL, an immigration law firm, alleged that a former senior employee, Diaz, misappropriated ALIL's proprietary systems, software, and operational know-how and that Meneses Law hired Diaz to exploit that information to compete directly with ALIL, imitate its advertising, and divert business. ALIL pleaded multiple causes of action, including federal and Texas trade secret claims, contract claims, and common-law tort claims.

Court's Decision: The court held that the TUTSA's preemption provision displaces conflicting tort and restitution claims that are based on the alleged improper taking or use of trade secrets or confidential business information. Emphasizing the "majority approach," the court concluded that preemption applies even if the information might not ultimately meet the statutory definition of a trade secret and even though the common-law claims were pleaded in the alternative. Because ALIL's unfair competition and misappropriation or conversion counts were predicated entirely on the alleged unauthorized use and possession of ALIL's confidential information, they were preempted and dismissed.

As to ALIL's motion to dismiss Meneses Law's counterclaims as redundant, the court found the issue moot because Meneses Law filed an amended pleading removing the counterclaims at issue. The motion was therefore denied as moot.

SIXTH
CIRCUIT



Sixth Circuit

***Cincom Systems, Inc. v. Labware, Inc.*, No. 24-3726, 2025 WL 2742573 (6th Cir. Sept. 26, 2025).**

INDUSTRY

AI & Emerging Technologies

TAKEAWAY

If a company has a reasonable belief that its trade secrets have been misappropriated or potentially misappropriated, it must take reasonable steps to investigate. “Inquiry notice” starts the statutory clock, and when credible signs of misappropriation surface, companies must act promptly or risk losing their claims on statute of limitations grounds.

DETAILS

Procedural Posture: The Sixth Circuit affirmed the district court’s summary judgment dismissal of misappropriation of trade secret and federal copyright claims.

Factual Background: The plaintiff, Cincom Systems, which holds the exclusive right to market and license the VisualSmalltalk Enterprise (VSE) development platform, sued long-time VSE user defendant LabWare after a 2019 conference presentation led the plaintiff to conclude that LabWare had accessed, modified, and distributed its source code. The dispute dates to VSE’s ownership and licensing split in 1999, where Seagull Software retained the source code but ObjectShare (later acquired by Cincom) held the exclusive end-user licensing rights. Then, in 2006, LabWare acquired a license from Seagull to the VSE virtual machine source code despite Cincom’s prohibition against it. Cincom had earlier suspicions of trade secret misappropriation in 2014 when a former employee joined LabWare, but it did not investigate further at the time. After the 2019 conference presentation, Cincom filed suit in 2020 under the Ohio Uniform Trade Secrets Act (OUTSA) and a federal copyright infringement.

Court’s Decision: After the conclusion of discovery, the district court granted summary judgment to LabWare, and the Sixth Circuit affirmed, holding the trade secret claim was time-barred based on the 2014 inquiry notice. Under the OUTSA, a claimant must bring action “within four years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered.” The court concluded the claim was untimely because Cincom was on “inquiry notice” by 2014 based on a series of facts, including public posts about a former employee joining LabWare to work on similar work and Cincom’s awareness that the source code owner had previously sold code to third parties. Rather than investigate those red flags, Cincom chose to wait for definitive proof. The court held that the limitations period began in 2014, rendering Cincom’s 2020 suit untimely. Further, the court held that there was insufficient proof of copyright infringement because Cincom could not produce any evidence to allow the court to determine whether any infringement occurred.

***Shepard and Assocs., Inc. v. Lokring Tech., LLC*, No. 24-3348, 2025 WL 1420931 (6th Cir. May 16, 2025).**

INDUSTRY

Construction

TAKEAWAY

The trial court did not abuse its discretion by not awarding attorneys' fees for a trade secret misappropriation claim brought in bad faith where the defendant prevailed on summary judgment.

DETAILS

Procedural Posture: Appeal from district court's denial of prevailing the defendant's motion for attorneys' fees.

Factual Background: Lokring, a manufacturer and seller of pipe fittings and tools, sued third-party Tube-Mac Industries, Inc., for trade secret misappropriation, alleging that former sales representatives of the plaintiff, Shepard and Associates, obtained Lokring's sales contact information and used that information to Tube-Mac's benefit when those employees went to work for Tube-Mac. The district court granted Tube-Mac summary judgment, awarded Tube-Mac $33,000 in costs, but declined to award Tube-Mac attorneys' fees.

Court's Decision: Reviewing the district court's decision for abuse of discretion, the Sixth Circuit affirmed the district court's decision to award costs without fees. Both the federal and state trade secrets laws under which Tube-Mac sought fees authorized a court to award fees against a party that brings a claim in "bad faith." Bad faith requires a showing that the party's claim "was meritless, that the party knew at a certain point that it was meritless and nonetheless maintained it, and that the party brought or maintained the claim for some improper purpose." The Sixth Circuit heavily deferred to the district court's finding that "until summary judgment [Plaintiff] had some evidence and at least a potentially plausible case against Tube-Mac."

***CellMark, Inc. v. Webster, et al.*, 24-181-DCR, 2025 WL 1426825 (E.D. Ky. May 16, 2025).**

INDUSTRY

Consumer Products

TAKEAWAY

To adequately plead a trade secret misappropriation claim under the DTSA and the Kentucky Uniform Trade Secrets Act (KUTSA), a plaintiff must show either an unconsented disclosure or use of trade secret by one who used improper means to acquire the secret, or that the defendant knew, or had reason to know, that the trade secret was acquired through improper means. Passive receipt of trade secrets without soliciting them or using them is insufficient to meet this pleading standard.

DETAILS

Procedural Posture: Motion to dismiss and motion for judgment on the pleadings.

Factual Background: The plaintiff, CellMark, Inc., a Connecticut-based paper and packaging company, acquired Semper/Exter Paper Company and hired the defendant, Robert Webster, a former Semper principal. Webster signed an employment agreement containing confidentiality and nonsolicitation covenants. CellMark alleged that while still employed, Webster collaborated with competitors DRC Industries and Fortex Americas (led by a former CellMark employee, Goran Sohl) to steer business away from CellMark by sharing confidential information such as pricing margins, inventory levels, specifications, and supplier details, leveraging CellMark-sponsored customer events, and helping transition production at a key mill to Fortex. CellMark further claims Webster coordinated with then-employee Dinah Bowman to deplete its inventory and shift orders. Cellmark alleged that Bowman resigned after taking confidential information to Fortex. CellMark sued Webster, Bowman, Fortex, Sohl, and DRC for violating the DTSA, KUTSA, and a civil conspiracy to divert customers and misuse CellMark's confidential information and trade secrets.

Court's Decision: The court denied Webster's motion to dismiss claims under the DTSA and KUTSA, holding that the allegations established that despite the existence of confidentiality agreements, Webster intentionally shared confidential information with Cellmark's competitors. However, the court dismissed Cellmark's DTSA and KUTSA claims against the remaining defendants. The court held that the complaint did not sufficiently allege a claim against DRC, Fortex, Sohl, and Bowman because Cellmark failed to show that they solicited Cellmark's trade secrets and used them for economic benefit. Importantly, the court noted that even if DRC benefited from Webster's misappropriation of trade secrets, there were no allegations establishing that they solicited or actively used the trade secrets. The court also dismissed CellMark's unfair competition claim against all the defendants.

The court largely allowed the remaining CellMark claims to proceed, holding that the company plausibly alleged that Webster owed and breached fiduciary duties by diverting business and sharing confidential information, and that DRC Industries, Fortex, Bowman, and Sohl may have aided and abetted that breach, tortiously interfered with Webster's contractual obligations, and engaged in a civil conspiracy.

***Mall at Briarwood, LLC v. City of Ann Arbor*, No. 365726, 2025 WL 609796 (Mich. Ct. App. Feb. 25, 2025) (*Per Curiam*).**

INDUSTRY
Fashion & Retail

TAKEAWAY
Confidential property valuation materials — viz., lease terms, tenant sales, rent rolls, and operating metrics — can constitute "trade secrets" under the Michigan Uniform Trade Secrets Act (MUTSA) when they confer competitive value and are subject to reasonable secrecy measures.

DETAILS

Procedural Posture: The plaintiff, Mall at Briarwood, appealed by leave granted from a Michigan Tax Tribunal order that determined the plaintiff's confidential valuation materials were not trade secrets under the MUTSA. The Michigan Court of Appeals reversed and remanded, holding that the tribunal abused its discretion in finding the materials not eligible for trade secret protection.

Factual Background: The plaintiff challenged the city's assessments of two Ann Arbor, Michigan, parcels, asserting overvaluation. Discovery encompassed sensitive commercial information, including an appraisal report and confidential tenant and financial data such as lease terms, sales volumes, occupancy costs, rent rolls, and property operating results. Following an in-camera review, the tribunal initially granted a protective order under MCR 2.302(C)(8). The parties later jointly sought to file valuation disclosures under seal and to hold the hearing in closed session, arguing the materials were trade secrets under the MUTSA and thus exempt from public disclosure under the Open Meetings Act. The tribunal ultimately concluded that the information lacked independent economic value to competitors and denied a closed hearing.

Court's Decision: The Court of Appeals held that the tribunal's determination that the materials lacked independent economic value was not supported by substantial evidence and was outside the range of principled outcomes. Applying the MUTSA's definition and persuasive trade secret factors, the court emphasized that the plaintiff's confidential lease, income, expense, and operations data would have value to competitors in the retail real estate market and that the plaintiff had taken reasonable steps to maintain secrecy, as reflected in the prior protective order. The case was reversed and remanded for proceedings consistent with the opinion.

***Ford Motor Co. v. InterMotive, Inc.*, No. 4:17-CV-11584, 2025 WL 2800184 (E.D. Mich. Sept. 30, 2025).**

INDUSTRY

Transportation & Mobility

TAKEAWAY

Under the MUTSA, a claimant is entitled to attorneys' fees if it demonstrates willful and malicious misappropriation. *Ford Motor* offers insight into how a claimant can meet this burden. Here, the court awarded attorneys' fees because the plaintiff shared the defendant's trade secrets in violation of their confidentiality agreement out of fear it would fall behind its competitors.

DETAILS

Procedural Posture: The defendants' motion for attorneys' fees.

Factual Background: Ford Motor Company and InterMotive, Inc. had a relationship between 2011 and early 2012, in which InterMotive would design an "Upfitter Interface Module" for Ford to offer as a factory-installed option on its vehicles. Preliminary discussions between the two were governed by a CDA. During the relationship, Ford and InterMotive developed prototypes and promoted the Upfitter Interface Module at truck shows.

In early 2013, Ford informed InterMotive that it was not moving forward with developing its own Upfitter Interface Module. Unbeknownst to InterMotive, however, Ford sent specifications to other potential suppliers, and at the 2016 National Truck Equipment Association show, Ford announced that several of its 2017 vehicles would include an "Upfitter Interface Module" that would better enable upfitters to interact with the electrical system of Ford vehicles. Based on this evidence, InterMotive asserted that it was apparent that Ford had taken InterMotive's confidential specifications that it received during their relationship.

InterMotive tried to resolve the above issues without litigation. Instead, Ford first sued InterMotive alleging trademark infringement for using Ford's mark on InterMotive products and marketing materials without Ford's consent. In response, InterMotive filed counterclaims, including a claim under the MUTSA.

As to the MUTSA claim, InterMotive alleged that Ford took InterMotive's trade secrets and distributed them to its suppliers, who, in turn, used them to make Ford's Upfitter Interface Module. InterMotive described the trade secret as "the use of programmable inputs in a device like the Upfitter Interface Module." This trade secret was a combination of two elements: "(1) a device like the Upfitter Interface Module; and (2) programmable inputs."

The case proceeded to a jury trial. Ford abandoned its claims after its case-in-chief, but the jury still considered InterMotive's counterclaims. The jury found, *inter alia*, that Ford misappropriated InterMotive's trade secrets and awarded $13 million in damages. The damage award was based upon the profits Ford allegedly had realized because of misappropriating InterMotive's trade secrets. InterMotive moved for attorneys' fees under the MUTSA.

Court's Decision: The court granted InterMotive's request for attorneys' fees under the MUTSA.

The court first ruled that it had authority under the statute to act as the factfinder as to whether Ford acted willfully and maliciously in misappropriating InterMotive's trade secrets, and not a jury. Ford had argued that the court could not award attorneys' fees because the jury verdict did not include an express finding of "willful and malicious misappropriation." The court acknowledged that there was little case law on the subject. In ruling against Ford, the court noted that the MUTSA does not expressly require a factfinder to find that willful or malicious misappropriation occurred before the court awards attorneys' fees. It also cited to certain cases holding generally that the court is the factfinder when it comes to awards of attorneys' fees.

The MUTSA does not define "willful and malicious," and Michigan courts have provided little guidance on what those terms mean for purposes of the statute. The court relied on a leading treatise that defined "willful" as "done with actual or constructive knowledge of its probable consequences," and "malicious" as "done with intent to cause injury." The court determined that the following evidence supported a finding that Ford engaged in willful and malicious misappropriation:

- InterMotive shared the Upfitter Interface Module and its programmable inputs with suppliers in violation of the CDA. One of its suppliers, in turn, used this information to make a module and

Ford sold it.

- The Upfitter Interface Module and its programmable inputs were trade secrets.
- Ford engaged in this conduct because it was worried about falling behind the competition and losing vehicle sales to its competitors.
- Ford then touted the use of programmable inputs in its advertising.

On the basis of this evidence, the court found that Ford had acted with actual or constructive knowledge of the consequences of its actions and with an intent to injure InterMotive.

SEVENTH CIRCUIT

Seventh Circuit

***LKQ Corp. v. Rutledge*, 126 F.4th 1247 (7th Cir. 2025).**

INDUSTRY

Private Companies

TAKEAWAY

Delaware's employee choice doctrine broadly enforces forfeiture-for-competition provisions tied to equity awards without a reasonableness review when the employee voluntarily resigns. This rule extends beyond limited partnership agreements and applies to Restricted Stock Unit (RSU) agreements, and only a narrow, extraordinary-hardship exception for unsophisticated parties might justify departure from enforcement.

DETAILS

Procedural Posture: The district court granted summary judgment to a former employee and dismissed the employer's unjust enrichment claim after determining that forfeiture-for-competition provisions in RSU agreements were unenforceable under Delaware law. On appeal, the Seventh Circuit certified questions to the Delaware Supreme Court regarding whether *Cantor Fitzgerald*'s rule governing forfeiture-for-competition provisions applied outside the limited partnership context. The Delaware Supreme Court answered that *Cantor Fitzgerald* applies broadly, including RSU agreements. Relying on that answer, the Seventh Circuit reversed the district court's summary judgment on the RSU enforceability issue and remanded for further proceedings on breach, while its prior affirmances on unjust enrichment and separate restrictive covenant claims remained undisturbed.

Factual Background: LKQ designated Robert Rutledge, a plant manager earning roughly $109,000 and classified as a "key person," to receive RSU awards subject to forfeiture-for-competition provisions. The RSU agreements barred competition within nine months of departure and allowed LKQ to claw back all proceeds from the stock awards upon breach. Rutledge resigned from LKQ in 2021 and joined a competitor five days later. LKQ sued for unjust enrichment and breach of the RSU agreements as well as separate restrictive covenant agreements. The district court dismissed the unjust enrichment claim and later granted summary judgment to Rutledge on the contract claims, concluding that the forfeiture provisions were unenforceable.

Court's Decision: The Seventh Circuit held that, under Delaware law as clarified by the Delaware Supreme Court, forfeiture-for-competition provisions in RSU agreements are not subject to a reasonableness review when the employee voluntarily resigns. The Delaware Supreme Court described the employee choice doctrine as broad and indicated only a narrow, extraordinary-hardship exception might apply for unsophisticated employees facing extreme duration and financial hardship. On the undisputed record, Rutledge — a management-level, designated key employee who voluntarily accepted equity conditioned on forfeiture — did not fall within any such exception. The Seventh Circuit therefore reversed the district court's summary judgment on enforceability and remanded for the district court to address whether Rutledge breached the RSU agreements and to determine appropriate further proceedings.

***GTY Technology Holdings Inc v. Wonderware, Inc.*, 2025 WL 1455762, No. 24-cv-9069 (N.D. Ill. May 21, 2025).**

INDUSTRY

AI & Emerging Technologies, Private Companies

TAKEAWAY

For purposes of DTSA coverage, a defendant's "act in furtherance of" the misappropriation of trade secrets that occurs in the United States does not need to be the offense itself or any element of the offense for a court to have personal jurisdiction over the defendant. Rather, a foreign-based defendant's actions in furtherance of the misappropriation that occur in the United States, or against a United States-based plaintiff, may be sufficient to state a claim under the DTSA, even where the alleged misappropriating act occurs outside the United States.

DETAILS

Procedural Posture: The defendants' motion to dismiss.

Factual Background: The plaintiff is a provider of technology services to government entities. The plaintiff claims trade secret misappropriation by two former employees, including one who worked remotely from Canada. The Canadian defendant, in coordination with the Chicago defendant, allegedly conspired to take trade secret information, including two highly sensitive documents containing business strategy and customer information, with them to their new employer, and the Canadian defendant downloaded these documents to his personal email account from his home office in Canada. The plaintiff sued, alleging trade secret misappropriation. The defendants moved to dismiss the claims against the Canadian defendant on the basis that his conduct occurred in Canada, outside the jurisdiction of the DTSA.

Court's Decision: The court denied the motion to dismiss. The plaintiff satisfactorily alleged that the defendant committed an "act in furtherance" of the trade secret misappropriation by visiting Chicago and allegedly discussing the scheme with the Chicago defendant, as well as his communications about the trade secret information when he was in Chicago. The court explained that these actions amounted to "steps taken" to steal protected information. Because "these steps were directed" at a Chicago-based corporation "and/or occurred in Chicago," the DTSA applied to the Canadian defendant's conduct.

***My Fav Elec., Inc. v. Currie et al.*, No. 24-C-1959, 2025 WL 1768888 (N.D. Ill. Jun. 26, 2025).**

INDUSTRY

Consumer Products, AI & Emerging Technologies

TAKEAWAY

In the trade secrets context, a misappropriated acquisition, disclosure, or use of trade secrets in a forum state is sufficient to link the misappropriated trade secrets to the forum, thereby establishing specific personal jurisdiction.

DETAILS

Procedural Posture: The defendant's motion to dismiss for lack of personal jurisdiction or, in the alternative, for improper venue.

Factual Background: The plaintiff and the defendant are both in the business of purchasing used technology devices, mostly from school districts, and reselling those devices. The plaintiff alleges that the defendant induced two of the plaintiff's former employees to breach their confidentiality agreements with the plaintiff and disclose confidential information and trade secrets to the defendant. In arguing that the court had jurisdiction, the plaintiff further alleged that the defendant used the trade secret information to compete directly for at least three of the plaintiff's existing Illinois customers.

Court's Decision: On the issue of the court's specific personal jurisdiction over the defendants, the only issue in dispute was whether the plaintiff's alleged injuries arose out of the contacts that the defendants have in Illinois. Federal law provides that a defendant's contacts with the forum may relate to the plaintiff's claims without a strict causal relationship between the contacts and the claims. The court's focus should be on ensuring that the conduct and litigation are related.

The court determined that the plaintiff's injuries resulting from the defendants' alleged misappropriation of trade secrets — namely the lost dollar value of at least one buyback opportunity and the intangible loss of competitive advantage — is directly related to the defendants' pursuit of buyback opportunities. This is especially true where some of the plaintiff's injuries arise from the defendants' pursuit of buyback opportunities in Illinois. In the trade secrets context, a defendant's acquisition, disclosure, or use of trade secrets in a forum is sufficient to link the misappropriated trade secrets and that forum. Here, the plaintiff alleged that the defendants reached directly into Illinois and competed with the plaintiff for customers in Illinois using the plaintiff's misappropriated trade secrets, which sufficiently established a link between the misappropriated trade secrets and Illinois. Thus, the court denied the defendants' motion to dismiss for lack of personal jurisdiction.

***Slate Craft Goods, Inc. v. Horseshoe Beverage Co., LLC*, 785 F. Supp. 3d 428 (E.D. Wis. 2025).**

INDUSTRY

Beverage & Food

TAKEAWAY

District Court denies a motion for preliminary injunction where the plaintiff failed to present sufficient, undisputed evidence that the information at issue was confidential or a trade secret.

DETAILS

Procedural Posture: The plaintiff's motion for preliminary injunction.

Factual Background: The plaintiff, Slate Craft Goods, Inc., a company that creates and sells protein-packed beverages, sued the defendant, Horseshoe Beverage Co., LLC, its manufacturer, for trade secret misappropriation under both state and federal law. Slate alleged that it shared with Horseshoe details regarding a confidential business opportunity, including a sample of a potential new protein-packed beverage offering. Horseshoe acknowledged that it received the sample but denied that Slate shared any information about the product or its plan to sell. Shortly thereafter, Horseshoe launched its own protein-packed beverage with the same retailer.

Slate moved for a preliminary injunction requiring Horseshoe to cease its use of Slate's proprietary information, return the proprietary information to Slate, and cease its manufacture and sale of Horseshoe's new product at the retailer.

Court's Decision: The district court denied the plaintiff's motion for preliminary injunction on the grounds that there was conflicting evidence regarding whether the information at issue was secret or confidential (*i.e.*, that Slate failed to demonstrate a likelihood of success on the merits). The district court, after evaluating Slate's affidavits, emails, and other documents, and Horseshoe's explanation of that evidence, found "competing inferences from the same evidence." Horseshoe argued that the information that Slate claimed was a trade secret was known in the business industry, and the court noted that Slate did not offer expert testimony to counter that point.

EIGHTH
CIRCUIT

Eighth Circuit

***Gilk v. Fisher,* No. 25-2158, 2025 WL 1920496 (D. Minn. Jul. 11, 2025).**

INDUSTRY

National Security, Transportation & Mobility

TAKEAWAY

Gilk underscores that partners in a closely held business have a fiduciary duty to maintain confidentiality. A plaintiff's reliance on these duties may be sufficient to show reasonable efforts to maintain secrecy of a trade secret.

DETAILS

Procedural Posture: Motion for TRO and preliminary injunction.

Factual Background: Daniel and Samuel Gilk founded Fly Boatworks, LLC, in 2012 to design, build, and sell skiff boats. In 2019, the Gilks began collaborating with Mark Fisher to develop a new skiff model, the F2 Carbon. In 2021, Fisher, Errol Galt, and Mark Baker (the investors) invested in Fly Boatworks and became parties to the company's operating agreement. The Gilks claimed primary responsibility for the specific design work for the F2 Carbon. By late 2022, the first prototype was completed, and Fly Boatworks began limited production and sales, delivering four F2 Carbons to customers.

In October 2024, Fly Boatworks entered negotiations with Martac Corp. to integrate the F2 Carbon's components into Martac's M18 unmanned vessel. The Gilks alleged they developed all new components for the M18 integration. In December 2024, Fisher, on behalf of Fly Boatworks, sent Martac a proposal that had the potential to generate $23 million in annual profits.

After the M18 design was finalized, the Gilks alleged that the investors formed several entities to divert Fly Boatworks' business opportunities and misappropriate its trade secrets. The investors formed Axocon Polymers, LLC, and began negotiating with Martac on Axocon's behalf to allegedly cut Fly Boatworks out of the deal. Further, the investors created Marine Aerospace Composites, LLC, allegedly to secure the manufacturing contract with Martac. Galt allegedly used his company, Oversight Resources, LLC, to receive invoices related to the M18 mold construction. The Gilks further alleged that Fisher filed a patent application on behalf of Axocon, naming himself, Galt, and Baker as inventors, and incorporating Fly Boatworks' proprietary innovations.

Because the Gilks believed that a prototype would be delivered to Martac, and a contract signed with Axocon imminently, they filed suit individually and derivatively on behalf of Fly Boatworks alleging, *inter alia*, misappropriation of trade secrets, and filed a motion for a TRO and a preliminary injunction.

Court's Decision: The court granted the Gilks' motion.

Based on the allegations and the limited evidence before it, the court found that Gilks's innovations in the F2 Carbon and as integrated in the M18 (the Skiff Innovations) were trade secrets.

The court found that the specifics of the F2 Carbon and its integration into the M18 were not generally known or readily ascertainable. The defendants argued that the Skiff Innovations lost its trade secret status because the Gilks engaged in public marketing, negotiations with Martac, and sales over the Skiff Innovations. Evidence showed that even Fisher, with access to the information, continued to request engineering help from the Gilks, suggesting the information was not easily replicable. Testimony at the preliminary injunction hearing confirmed that the Skiff Innovations were novel. It also reasoned that, if advertising, selling, or negotiating over a trade secret resulted in a waiver of their protection, then Fly Boatworks would never have been able to apply Skiff Innovations for their intended use.

The court also found that the Gilks established reasonable efforts to maintain secrecy because the investors had a fiduciary duty to maintain secrecy of the trade secret information as partners in Fly Boatworks and as required under the operating agreement. Moreover, employee emails suggested that there was a shared understanding that the information was confidential. In its analysis, the court acknowledged that more could have been done to protect the trade secrets but that did not mean that the Gilks's efforts were inadequate.

As for irreparable harm, the court found that the Gilks would be harmed by not being able to bring the Skiff Innovations to market first, which is a unique and non-monetary advantage because it would demonstrate their goodwill and status as an innovator in the market. The court also credited the Gilks' argument that the Martac contract was essential to Fly Boatworks' existence. This harm was imminent because emails suggested that there were active negotiations between the investors and Martac that excluded Fly Boatworks. Such harm could not be adequately remedied by a monetary award.

***Raycap Holdings LLC d/b/a Superior Indus. Supply v. Ervin*, No. 4:24-cv-1219-RHH, 2025 WL 1137206 (E.D. Mo. Feb. 5, 2025).**

INDUSTRY
Construction

TAKEAWAY
At the preliminary injunction phase, a failure to use appropriate contractual restrictions and a pattern of permitting personal cloud backups of alleged trade secret information can defeat the requirement to show a likelihood of success on the merits.

DETAILS

Procedural Posture: Motion for preliminary injunction.

Factual Background: Superior Industrial Supply, acquired by Raycap in 2023, employed Ervin as an outside salesperson with access to confidential customer contact information and pricing. Without a noncompete, Ervin resigned in July 2024, factory-reset his company iPhone, restored its contents from his personal iCloud (where he had long backed up the phone with Superior's knowledge), and immediately joined competitor Air Hydraulics Co. (AHC). Within weeks, he allegedly solicited numerous Superior customers, transferred their information into AHC's systems, and won business — sometimes prompting returns of recently purchased Superior product or price concessions. Superior's policies included confidentiality and device return and reset requirements, but were inconsistently enforced, and salespeople were permitted to back up phones to personal iCloud accounts.

Court's Decision: The court found Superior had not shown a likelihood of success on the merits on its breach of contract or DTSA claims. As to the breach of contract claim, the court concluded that an employee handbook acknowledgment and a job duties description — signed years after Ervin's promotion and lacking the president's signature contemplated by the handbook — did not establish an enforceable agreement supporting injunctive relief. On the trade secrets claims, the court recognized that customer contact information can have independent economic value and is not always readily ascertainable, especially if it includes decisionmakers' personal cell numbers and other details compiled over years. But Superior had not shown "reasonable measures" to maintain secrecy in practice, given permissive personal iCloud backups, inconsistent device recovery and data scrubbing, and limited verification of data return at separation. Misappropriation likewise was not likely. Restoring data from a personal iCloud account with employer authorization during employment did not constitute "improper means," and Superior had not articulated a viable alternative misappropriation theory. On irreparable harm, the court held that Superior's losses from diverted customers and price competition were quantifiable and compensable by money damages and that generalized assertions of goodwill harm were insufficient.

***Williams v. Insomnia Cookies, LLC*, No. 4:23-cv-669, 2025 WL 2062189 (E.D. Mo. Jul. 23, 2025).**

INDUSTRY

Beverage & Food

TAKEAWAY

The court held that the statute of limitations began when the defendants first discovered the alleged misappropriation rather than when it occurred because the defendant exercised reasonable diligence in uncovering alleged misappropriation.

DETAILS

Procedural Posture: Motion to dismiss the defendants' amended counterclaims.

Factual Background: Two former Insomnia Cookies store managers (Williams and Gibson) sued Insomnia Cookies' stores in the St. Louis, Missouri, region. The plaintiffs brought Fair Labor Standards Act (FLSA) and other employment-related claims against Insomnia Cookies. Gibson filed a second amended complaint against Insomnia, adding additional FSLA and employment claims against the company. In response, Insomnia filed an amended answer and asserted counterclaims against Gibson. Insomnia alleged that Gibson had violated the DTSA and related Missouri state laws. Insomnia alleged that Gibson, while employed as a store manager between 2017 and 2021, accessed and retained "43 pages of detailed financial forecasting reports for over 170 Insomnia Cookie stores . . . in addition to sales charts from varying points in 2020[.]" *Id*. at *5. Insomnia alleged that the financial records "contained sensitive sales data, financial outlooks, and business strategies that would be valuable to a competitor[.]" *Id*. Gibson filed a motion to dismiss the trade secrets claims, arguing that the court lacked subject-matter jurisdiction, that Insomnia failed to state a claim, and that the DTSA claim was time-barred.

Court's Decision:

- **Subject Matter Jurisdiction:** Gibson urged the court not to exercise jurisdiction over Insomnia's counterclaims on the basis that "there is a risk that the counterclaims will predominate over his FLSA claims[.]" The court denied Gibson's request, concluding it had original jurisdiction to hear the DTSA claim and choosing to exercise supplemental jurisdiction over the related state-law claims.

- **Failure to State a Claim:** The court found that Insomnia allegedly took sufficient measures to protect the financial information by requiring employees to sign a nondisclosure agreement and to reaffirm the obligations of that agreement upon their separation from the company. The court further found that there was a factual basis to infer that Gibson had misappropriated the financial information. Gibson produced confidential financial records during discovery in his FLSA case. While there are no allegations that Gibson used the financial data, the court found that there exists a factual basis to infer that "Gibson accessed the documents without authorization[.]" *Id*. at *6.

- **Statute of Limitations:** Gibson alleged that Insomnia's DTSA claim was time-barred by the three-year statute of limitations because the financial documents were from 2020, and Insomnia did not bring its trade secrets claims until October 2024. Insomnia claimed it did not learn of the misappropriation until Gibson produced the financial records in September 2024. Gibson argued, nonetheless, that Insomnia should have known of the alleged misappropriation sooner. The court disagreed, holding that the statute of limitations did not begin until September 2024. The court found that Insomnia exercised reasonable diligence in uncovering the alleged misappropriation. The court found that there was nothing in the pleadings that "suggest[s] that Defendants had reason to suspect Gibson, a Store Manager, was accessing and taking their confidential, financial documents." The court noted that there were no allegations, for example, that Gibson had committed prior malfeasance against the company, that he did not obey company rules, or that he was leaving to work for a competitor." *Id*. at *7.

NINTH CIRCUIT

Ninth Circuit

***Quintara Biosciences, Inc. v. Ruifeng Biztech, Inc.*, No. 23-16093, 2025 WL 2315671 (9th Cir.).**

INDUSTRY

Life Sciences

TAKEAWAY

The DTSA does not require a plaintiff to identify its allegedly misappropriated trade secrets with particularity at the pleading stage because that is a question of fact for summary judgment or trial. This decision distinguishes the DTSA from the CUTSA, which requires a plaintiff to disclose any allegedly misappropriated trade secrets with "reasonable particularity" prior to discovery. In doing so, this decision will impact how parties and courts navigate trade secret identification within the Ninth Circuit.

DETAILS

Procedural Posture: Appeal of district court's grant of a motion to strike.

Factual Background: Quintara Biosciences, Inc. alleged that Ruifeng Biztech, Inc. violated DTSA by misappropriating 11 trade secrets, including customer and vendor databases, marketing plans, and new product designs. Prior to discovery, the district court directed Quintara to summarize its allegedly misappropriated trade secrets with "reasonable particularity" by describing their independent economic value by not being generally known, how Quintara kept them secret, and the precise elements for each trade secret consistent with claims at the end of a patent. Dissatisfied with Quintara's disclosure, Ruifeng moved to strike.

The district court granted the motion to strike nine of the 11 allegedly misappropriated trade secrets, effectively dismissing them as a discovery sanction. While Quintara only alleged a DTSA claim, the court applied section 2019.210 of CUTSA, which requires a plaintiff to identify allegedly misappropriated trade secrets with "reasonable particularity" before discovery. The court explained that the purpose of this disclosure requirement is "to permit us to discern the reasonable bounds of discovery, to give defendants enough notice to mount a cogent defense, and to prevent plaintiff from indulging in shifting sands." It cautioned that this requirement "should not drive us into the actual merits[.]" Following this order, the parties conducted discovery on the remaining two trade secrets. After the jury returned a verdict for Ruifeng, Quintara appealed the order granting Ruifeng's motion to strike.

Court's Decision: The Ninth Circuit reversed and held that while CUTSA requires a plaintiff to disclose an allegedly misappropriated trade secret with "reasonable particularity" prior to discovery, federal law has no such requirement. Instead, whether a plaintiff identifies an allegedly misappropriated trade secret with "sufficient particularity" for a DTSA claim is a question of fact meant for summary judgment or trial. While acknowledging that identifying allegedly misappropriated trade secrets presents a "delicate problem," the Ninth Circuit stressed that the "iterative process" of discovery can lead to sufficiently particularized identifications. Ultimately, the Ninth Circuit determined that the district court abused its discretion and imposed an overly harsh penalty because "neither Rule 12(f) nor Rule 16 authorized the district court to strike—and functionally dismiss—Quintara's claim to nine of its trade secrets."

***Eurofins Elec. & Elec. Testing NA, LLC v. SGS NA Inc.*, 2025 WL 607199 (N.D. Cal. Jan. 23, 2025).**

INDUSTRY

Construction, AI & Emerging Technologies

TAKEAWAY

Although the plaintiff, Eurofins Electrical and Electronic Testing NA, secured meaningful restrictions on use of its information and short-term limits on certain activities, the court declined broader relief as disproportionate or contrary to California policy. The court granted a preliminary injunction in favor of the plaintiff based on compelling evidence of trade secret misappropriation but tailored the remedy to prevent further misuse without shutting down the defendant, SGS's new lab or effectively terminating the individual defendants.

DETAILS:

Procedural Posture: The plaintiff's motion for preliminary injunction and the defendants' motion to strike.

Factual Background: Eurofins provides safety and approvals services for electrical and electronics products. After their employee Zuniga joined competitor SGS North America, he solicited confidential Eurofins information from Eurofins employees Duong and Chou. The court issued a TRO prohibiting the use, disclosure, alteration, or destruction of Eurofins' confidential information, defining that information to include lab and test-chamber schematics, equipment lists, pricing and invoices, testing schedules, test reports and results, client and prospect lists, business plans, non-public financials, and customer files. During the TRO, the plaintiff Eurofin sought to enjoin the defendant SGS from opening its Milpitas laboratory, asserting it was built with Eurofins trade secrets. The court declined that relief and ordered expedited discovery before the preliminary injunction hearing.

Expedited discovery revealed months of communications in which Duong and Chou provided Zuniga with Eurofins material, which Zuniga circulated internally at SGS. The record also reflected apparent misstatements in earlier declarations and evidence suggesting deletion of emails and an intent to "take everything" from Eurofin.

Court's Decision: The court denied SGS's motion to strike late-filed evidence but found it largely duplicative of record materials and unnecessary to the ruling. On the merits, the court granted in part Eurofin's motion for a preliminary injunction, finding a strong showing on the winter factors and a need to craft a remedy that prevented further harm while preserving lawful competition and employment.

On likelihood of success, the court found that the plaintiff had a fair chance to prove misappropriation of six categories of trade secrets: (1) a lab equipment list, (2) client quotes, (3) client information, (4) chamber schematics, (5) internal financials, and (6) client reports. In each category, the court credited evidence that Chou and/or Duong disclosed Eurofins information to Zuniga, who then transmitted it within SGS for competitive use — conduct likely in breach of their confidentiality agreements and within the statutory definitions of misappropriation. The court rejected defense arguments that the information was public, stale, or unused, emphasizing the economic value of secrecy, the internal sourcing from Eurofins systems, contemporaneous requests to "keep [it] confidential," and the internal circulation at SGS as sufficient "use" at this stage. Although SGS demonstrated that its Milpitas chambers differed in models and test plans from Eurofins' and that not all schematic details were used, the court concluded the schematics were at least used as a reference and likely remain protectable despite partial public disclosures.

On irreparable harm, the court recognized loss of trade secrets, goodwill, client relationships, and the "head start" advantage as injuries not readily compensable by damages. The court decided that the balance of equities and public interest favored an injunction protecting trade secrets while avoiding remedies that unduly restrict competition or employee mobility.

The court tailored relief accordingly. It denied the plaintiff's renewed request to bar the defendant SGS from opening or operating the Milpitas lab, finding the lab was not "built entirely or exclusively" from Eurofins information and could operate without it. Shutting it down would be disproportionate. The court also rejected the plaintiff's broader employment restraints that would effectively terminate Zuniga and Duong, instead adopting a narrower 30-day restriction on their Milpitas activities — over-the-air and electromagnetic compatibility testing, outside sales, and initiation of new client contact — reflecting the estimated time saved by the misappropriation. Furthermore, the court declined to bar SGS from soliciting Eurofins employees, noting California's strong policy against restraints on employee mobility. Finally, the court enjoined defendants from using or disclosing specified Eurofins materials already identified in the record, ordered preservation, and directed the parties to propose a protocol for return and destruction of the plaintiff's information.

The court entered preliminary injunctive relief entered for the plaintiff based on a robust showing of misappropriation across six categories of confidential materials, but the court declined to shut down SGS's lab or impose long-duration employment bans. Although the court did not grant all of the plaintiff's proposed remedies, the injunction by the court was targeted at stopping ongoing misuse and preserving fair competition consistent with California law.

***Roche Molecular Sys, Inc. v. Foresight Diagnostics Inc.*, 2025 WL 1953464 (N.D. Cal.).**

INDUSTRY

Life Sciences

TAKEAWAY

Early-stage publications that are high-level and do not reference the accused product may not trigger inquiry notice for statute-of-limitations purposes. In addition, indirect liability may be established against a newly formed venture when founders carry alleged trade secrets into the new venture.

DETAILS

Procedural Posture: Motion to dismiss.

Factual Background: Roche acquired Capp Medical (CappMed) and its CAPP-Seq technology for circulating tumor DNA detection, then retained Stanford physicians Drs. Diehn, Alizadeh, and Kurtz as consultants subject to noncompetition, confidentiality, and invention assignment obligations. Roche alleges that it developed numerous technical improvements and algorithms (19 categories) constituting trade secrets. While consulting for Roche, the Doctors co-founded Foresight Diagnostics to commercialize PhasED-Seq, allegedly built on Roche's trade secrets. Roche's complaint references a 2020 Nature article (Chabon 2020), a 2022 patent application, and a 2024 *Nature* article to connect Roche's trade secrets to PhasED-Seq and seeks trade secret relief and a declaratory judgment of ownership over 15 Stanford-filed patent applications.

Court's Decision: The court rejected Foresight's statute-of-limitations defense at the pleading stage, holding that the 2020 *Nature* article did not, by itself, put Roche on inquiry notice. The publication was high-level, certain aspects of CAPP-Seq were already public, and — critically — it did not reference PhasED-Seq. Roche plausibly alleged later notice through subsequent publications that did reference PhasED-Seq. On the merits, the court found Roche described its trade secrets with sufficient particularity, distinguishing acquired CAPP-Seq/iDES components from Roche's asserted improvements and algorithms across 19 defined categories supported by exhibits. The court further held that Roche plausibly alleged misappropriation by Foresight, including indirect misappropriation through its founders, because the complaint tied Foresight's formation and PhasED-Seq's development to the consultants' access to, and use of, Roche's trade secrets during the consulting period.

***Valeo Schalter Und Sensoren GmbH v. Nvidia Corp.*, 2025 WL 2505115 (N.D. Cal.).**

INDUSTRY

AI & Emerging Technologies, Transportation & Mobility

TAKEAWAY

Circumstantial evidence is adequate to survive summary judgment as to whether the plaintiff's former employee's alleged misappropriations were incorporated and implemented by his new employer.

Whether a trade secret is identified with sufficient particularity is a question of fact. A triable issue for a jury exists where a plaintiff refers to specific source code files, documents, and figures, to illustrate protectable functionalities.

DETAILS

Procedural Posture: The defendant's motion for summary judgment.

Factual Background: The defendant, NVIDIA Corporation, filed a motion for summary judgment as to the plaintiff, Valeo Schalter und Sensoren GmbH's, trade secrets claims. Valeo, an automotive technology company, supplies driving and parking assistance technology to car manufacturers across the globe. NVIDIA is a leader in AI and works with car companies to create driving systems that harness it. Both parties worked on a project for Mercedes-Benz, and NVIDIA hired an employee from Valeo who was working on the project. Valeo took legal action in Germany against the employee, and evidence revealed that he downloaded source code and documents. Valeo contended NVIDIA misappropriated Valeo's trade secrets by incorporating and implementing the trade secrets taken by the employee.

Court Decision: On a motion for summary judgment, NVIDIA argued that, notwithstanding the employee's conduct, Valeo failed to show that NVIDIA misappropriated any trade secrets, since NVIDIA removed any of the employee's work product from NVIDIA's code base. The court denied summary judgment, finding that Valeo provided enough circumstantial evidence to raise a triable issue. This included the employee being found with Valeo's confidential documentation in his NVIDIA workspace and possessed Valeo code on his laptop. NVIDIA also hired a second employee from Valeo who worked on the project. Though NVIDIA claimed to have scrubbed its code clean, this too presented a triable issue based on circumstantial evidence. As NVIDIA retained access to the tainted code, it made rapid progress in its code development after prior failures, and it did not develop the code through a clean room process.[5]

NVIDIA also argued it was entitled to summary judgment because Valeo had not defined its trade secrets with sufficient particularity to separate them "from matters of general knowledge in the trade or of special knowledge of those persons skilled in the trade."

Valeo argued it identified its trade secrets with sufficient particularity, as evidenced by NVIDIA's experts, who were able to respond to the substance of Valeo's trade secret claims. Valeo cites several specific source code files and documents within particular file paths. Where relevant, Valeo also included figures illustrating the identified trade secret.

Based thereon, the court ultimately found that there was a genuine issue of material fact as to whether Valeo identified its trade secrets with sufficient particularity.

[5] A clean room process for software development is a strategy to independently recreate a product or functionality while preventing misappropriation of trade secrets or copyright infringement based on prior access to a competitor's code.

***Tomahawk Manufacturing, Inc. v. Spherical Industries, Inc.*, No. 2:23-cv-01007, 2025 WL 6895570 (D. Nev. May 15, 2025).**

INDUSTRY

AI & Emerging Technologies

TAKEAWAY

The District of Nevada considered who has standing to bring trade secrets misappropriation claims under the DTSA and the Nevada Trade Secrets Act (NTSA), recognizing that both statutes only permit "owners" of trade secrets to assert claims of misappropriation, and one who merely has possession of a trade secret is not considered an "owner" and does not have standing to assert a misappropriation cause of action under either statute.

DETAILS

Procedural Posture: The defendants' motion for summary judgment.

Factual Background: The plaintiff, Formtec, LLC, is an intellectual property company that owns a portion of trade secrets involving a sphere-into-cylinder Venturi technology in water applications, which are used in power washer spray nozzles. The other plaintiff, Tomahawk Manufacturing, Inc., is a protein-forming industry that served as Formtec's manufacturing affiliate. As Formtec's manufacturing affiliate, Tomahawk engineers researched and developed the sphere-into-cylinder technology. Tomahawk had access to the trade secrets and signed a confidential agreement with Formtec to protect the information.

The plaintiffs sued the defendants for a variety of claims, including Tomahawk's claims for misappropriation of trade secrets under the DTSA and NTSA. The defendants filed a motion for summary judgment on the plaintiffs' claims.

Court's Decision: The District of Nevada dismissed both of Tomahawk's trade secrets misappropriation claims for lack of standing. As for the DTSA claim, the court examined the plain language of the DTSA to determine who has standing to assert a claim under the statute. The DTSA expressly allows for an "owner" of a trade secret to bring a trade secrets misappropriation claim, which refers to one who either has legal title, equitable title, or a license in a trade secret. The court noted that possession of a trade secret does not make one an "owner" of a trade secret under the DTSA.

Applying that reasoning to the facts, the court concluded that Tomahawk was not an owner of the trade secrets. Although Tomahawk had access to the trade secrets and entered into an agreement with Formtec to keep the trade secrets confidential, that possession did not confer Tomahawk legal or equitable title or a license in the trade secrets. Accordingly, Tomahawk did not have standing to bring a DTSA claim.

As to the NTSA claim, the court similarly dismissed for lack of standing. Notably, the court recognized that the NTSA allowed a cause of action to be asserted by a "complainant" rather than an "owner." The court noted, however, that the statute did not define the term "complainant," and that the word "owner" appears elsewhere in the statutory scheme. The court concluded that the term "complainant" was therefore ambiguous and predicted that, given the lack of authority from the Nevada courts, a Nevada court would hold that only an "owner" — which is someone with legal or equitable title — could assert a misappropriation claim under the NTSA in light of the statutory scheme. As such, Tomahawk was not an owner of the trade secrets and did not have standing to bring an NTSA claim.

***Commercial Fire Prot., LLC v. Pigg*, 2025 WL 593574 (D. Ore. Feb. 21, 2025).**

INDUSTRY

Private Companies, Construction, Fire Alarm and Protection Services

TAKEAWAY

A complaint for trade secret misappropriation must (1) identify more than broad categories of potential trade secrets, and instead provide particular factual details, (2) not merely assert that reasonable measure of secrecy were undertaken, and provide details as to what efforts were taken, and (3) connect general misappropriation allegations of use, acquisition or disclosure to defendants' specific actions.

DETAILS

Procedural Posture: The defendants' motion to dismiss.

Factual Background: The plaintiff, Commercial Fire Protection, LLC, (CFP) is a fire protection company. The defendant, Michael Duane Pigg, was an employee of CFP for several years. During his employment, Pigg was promoted from lead fire alarm technician to portfolio manager. Pigg signed an acknowledgment when he was hired, where he certified that he would not engage in work that conflicted with CFP's business interests. As a portfolio manager, Pigg gained access to CFP's alleged trade secrets, which included pricing structures, client lists, marketing approaches, checklists, and other documents. Pigg was also responsible for the deployment of CFP equipment for employee use. In 2024, CFP alleges that Pigg created co-defendant Premier Fire Protection, LLC that offered the same services as CFP in the same markets. CFP alleges that Pigg and Premier used CFP's equipment, vehicles, and employees to complete jobs for Premier. CFP also alleged that Pigg poached employees to go work for Premier instead of CFP and that it caused CFP significant financial harm. CFP sued Pigg and Premier for (1) breach of duty of loyalty against Pigg, (2) intentional interference with economic advantage, (3) misappropriation of trade secrets under both the federal DTSA and the OUTSA, and (4) injunction.

Court's Decision: The principal trade secrets CFP alleged were misappropriated include pricing structures, client lists, marketing approaches, checklists, and other forms. CFP also alleged that its employee compensation information was a trade secret.

The court made the following rulings after analyzing whether CFP adequately alleged its claims under the DTSA and OUTSA to survive the defendants' motion to dismiss:

1. The court relied on *CleanFish, LLC v. Sims*, 2020 WL 1274991, at *9 (N.D. Cal. Mar. 17, 2020) to

support its finding that CFP's allegations in its complaint were not sufficiently particular to provide "notice of the boundaries of the alleged trade secret…." The court found that CFP's allegations merely described broad categories of information that are indistinguishable from matters of general knowledge within the industry.

2. The court also analyzed whether CFP adequately pleaded reasonable measures to maintain the secrecy of its alleged trade secrets. The court explained that CFP generally alleged it had taken reasonable efforts but did not allege facts demonstrating *how* it took reasonable efforts to keep its alleged trade secrets secret.
3. The court also analyzed whether CFP adequately alleged misappropriation of its alleged trade secret. CFP alleged that Pigg and Premier misappropriated its alleged trade secrets by using them for their own benefit. The court once again found CFP's allegations to be conclusory. The court ruled that CFP failed to connect its allegations to each defendants' specific actions, constituting misappropriation.

As a result, the court dismissed CFP's claims under DTSA and OUTSA.

***David v. Freedom Vans LLC*, 562 P.3d 351 (Wash. 2025).**

INDUSTRY

Transportation & Mobility, Construction

TAKEAWAY

This is the first Washington Supreme Court case analyzing a recent state law that bars "employers who pay their employees less than twice the minimum wage" from prohibiting employees from working second jobs.

DETAILS

Procedural Posture: The plaintiffs sued on behalf of themselves and others similarly situated arguing that the defendant's noncompete provision violated Revised Code of Washington (RCW) 49.62. The court granted the defendant's motion for summary judgment, reasoning that the statute "does not restrict an employer's right to require employee loyalty and avoidance of conflicts of interest during the course of employment consistent with the common law" in an express or implied manner." The Court of Appeals affirmed, and the plaintiffs appealed.

Factual Background: The plaintiffs, Jeremy David and Mark Springer, were employed by Freedom Vans, a company that converts and customizes vans into mobile homes. Freedom Vans required all employees to sign a noncompete agreement that prohibited them from "directly or indirectly engag[ing] in any business that competes" with Freedom Vans during their employment. The agreement defined "direct or indirect competition" to include "engaging in a business as owner, partner, or agent" or "becoming an employee of any third party that is engaged" in a "competitive business." David and Springer said they had both declined offers to take on additional work outside of Freedom Vans because of the noncompete agreement.

Court’s Decision: Reversed. The Supreme Court of Washington reasoned that the legislature directed courts to construe employee protections broadly and exceptions narrowly to effectuate the legislative intent of protecting low-wage workers from “unreasonable restrictions on additional employment.” The court concluded that “barring employees from providing *any* kind of assistance to competitors exceeds a narrow construction of the duty of loyalty, contrary to the legislature’s intent to protect low-wage employees.” The court reiterated, however, that RCW 49.62 does not eliminate an employee’s common law duty of loyalty to his employer. The court remanded the case back to the trial court to determine whether the defendant’s noncompete is reasonable under the facts and, if so, enforceable under the statute. In remanding, the court guided the trial court to consider: “whether there is a need to protect the employer’s business or goodwill, whether the restraint on the employee is reasonably necessary, and whether enforcing the noncompete agreement violates public policy.”

***DejaVuAI Inc. v. Kapoustine*, No. 2:25-cv-00915-JNW, 2025 WL 2663117 (W.D. Wash. Sep. 17, 2025).**

INDUSTRY

AI & Emerging Technologies

TAKEAWAY

A plaintiff can establish likelihood of success on a DTSA claim at the preliminary injunction stage where a coherent contractual chain — spanning an operating agreement, an exclusive license, and a proprietary information and inventions assignment agreement (PIIAA) — demonstrates lawful ownership or possession of the technology, and the record shows ongoing competitive “use” of the trade secrets by a former CTO. Courts will enjoin such use and disclosure, as well as related interference with customers and operations, upon evidence of threatened irreparable harm to market position and goodwill.

DETAILS

Procedural Posture: The plaintiff, DejaVuAI Inc., got a TRO against the defendant, Kapoustine, after terminating his employment. Following the TRO, the court ordered Kapoustine to show cause why the TRO should not be converted to a preliminary injunction. While that issue was pending, DejaVuAI moved for a preliminary injunction.

Factual Background: The dispute arises from the development of an AI-powered image recognition software initially prototyped by the defendant, later commercialized through 1st 1 Technologies LLP (formed in 2020 and restructured into DejaVuAI Inc. in 2022).

The restructuring involved: (1) an operating agreement distinguishing the defendant’s prototype from subsequent development work, (2) an exclusive license agreement from 1st 1 to DejaVuAI granting broad rights to the software and vesting ownership of improvements in DejaVuAI, and (3) PIIAAs under which the defendant, as CTO of DejaVuAI, assigned work-related inventions to DejaVuAI and identified “Prior Inventions” exempt from assignment.

DejaVuAI terminated the defendant's employment in February 2025. On May 16, 2025, DejaVuAI sued the defendant, asserting breach of fiduciary duties, tortious interference with contracts and business expectancy, and misappropriation of trade secretions under the federal DTSA. DejaVuAI alleged that the defendant began competing using its source code and algorithms, contacting customers and investors, disparaging the company, and threatening to publish or sell trade secrets. The defendant remained a member of DejaVuAI's board of directors until he resigned in June 2025.

Court's Decision: The court held that DejaVuAI was likely to succeed on its DTSA claim. The court began by stating that a trade secret plaintiff, "as part of [its] prima facie case," "must show either that it developed the trade secret at issue or otherwise [has] lawful possession of it." "Thus, if DejaVuAI does not have lawful possession of the trade secret, then it lacks standing to pursue a DTSA claim."

The court determined that the contractual framework established DejaVuAI's ownership of the disputed technology. Specifically, the operating agreement, exclusive license, and PIIAA — considering the context in which the agreements were entered — demonstrated "a clear progression: Kapoustine began with a prototype, more developed versions of that prototype became partnership property under the . . . Operating Agreement, 1st 1 Technologies licensed its rights to DejaVuAI under the License Agreement, and Kapoustine assigned his later improvements to DejaVuAI under the PIIAA. Accordingly, any DejaVuAI technology he created or improved while working for DejaVuAI likely belongs to DejaVuAI."

Kapoustine made several challenges to the contractual framework. Kapoustine argued: (1) he developed DejaVuAI technology alone and it was market-ready and fully functional prior to the formation of 1st 1 Technologies; (2) the PIIAA "identified his image-recognition software as a 'Prior Invention' exempt from assignment;" (3) he never signed the license agreement; (4) only he, not DejaVuAI, possessed the source code for the technology and thus, DejaVuAI never actually possessed the technology; (5) he was never legally employed by DejaVuAI because of his status as a Canadian citizen; (6) he never improved upon or created subsequent versions of the software while employed by DejaVuAI; and (7) DejaVuAI failed to take reasonable measures to maintain secrecy as required by DTSA. The court rejected each of these challenges.

TENTH
CIRCUIT

Tenth Circuit

***Double Eagle Alloys, Inc. v. Hooper*, No. 24-5089, 2025 WL 1162473 (10th Cir. Apr. 22, 2025).**

INDUSTRY

Construction, Energy & Cleantech

TAKEAWAY

At summary judgment, the plaintiffs must do more than demonstrate employee data theft. They must identify the trade secret with specificity and provide competent evidence that the information is non-public and not readily ascertainable, that it confers independent economic value because of its secrecy, and that it has been subject to reasonable secrecy measures. Vague categories, conclusory affidavits, and failure to distinguish protectable material from publicly available or commonly shared industry information will be fatal.

DETAILS:

Procedural Posture: The plaintiff appealed summary judgment for the defendants on all claims.

Factual Background: The plaintiff, Double Eagle Alloys, a specialty-metals distributor, sued its former employee, the defendant, Michael Hooper, and its competitor who hired Hooper, the defendant, Ace Alloys, LLC, for allegedly misappropriating trade secrets and confidential business information. Hooper worked as the Inside Sales Manager at Double Eagle for nearly five years before leaving to join Ace Alloys.

Hooper had downloaded 2,660 files from his Double Eagle computer before departing for Ace. Double Eagle alleged those files contained trade secrets comprising its pump-shaft-quality (PSQ) specifications for alloys used in oil-and-gas applications, pricing and margins data, and customer drawings. PSQ specifications aggregate customer preferences on packaging, chemistry, mechanical properties, and bar conditions to enable distributors to source material suitable for multiple customers rather than bespoke orders.

The district court granted summary judgment, holding that Double Eagle failed to identify its asserted trade secrets with sufficient particularity, failed to distinguish allegedly secret content from non-secret material within the files, and failed to present evidence of secrecy. The conspiracy claim failed for lack of an underlying tort.

Court's Decision: The Tenth Circuit affirmed the lower court's decision. The court held that Double Eagle did not adduce sufficient evidence from which a reasonable jury could find that its PSQ specifications, pricing information, or customer drawings qualified as either trade secrets under the DTSA or OUTSA or confidential business information under Oklahoma common law. For the PSQ specifications, the court emphasized they were readily ascertainable and lacked particularized proof. Critically, the plaintiff did not isolate the allegedly secret portions of its specifications or explain how any differences from public or competitor and customer specifications created independent economic value or conferred a competitive advantage. The court declined to "hunt through thousands of pages" to identify protectable elements and found the plaintiff's assertions conclusory.

For pricing, the court recognized that a proprietary pricing model can, with appropriate proof, qualify as a trade secret. Here, however, the court noted that the plaintiff shared prices with customers and offered only generalized statements about inputs (published surcharges, machining and material costs, and customer-specific margins). It failed to provide evidence of a unique methodology, the effort or resources required to build the model, or how the model provided a competitive edge beyond standard cost-plus-margin approaches. Without concrete, nonconclusory evidence showing uniqueness, value derived from secrecy, and reasonable secrecy measures, the pricing information did not qualify.

For customer drawings, the DTSA claim failed because the plaintiff did not own the drawings, as they originated from its customers. Under OUTSA, the claim failed because the plaintiff presented no evidence that the drawings were not readily obtainable from customers through proper means; the record reflected routine circulation of drawings to multiple suppliers for quoting. A single customer confidentiality agreement did not establish non-ascertainability across the board, particularly where other evidence showed drawings moving through third parties.

These evidentiary deficiencies likewise defeated the common-law misappropriation of confidential business information claim, which requires proof that the information was confidential to the plaintiff rather than a general secret of the trade and not readily available to competitors.

Because all other claims failed, the civil conspiracy claim failed for lack of an underlying tort. The court also rejected a procedural challenge, concluding the district court complied with Rule 56(f) by giving notice and a chance to respond before granting summary judgment on grounds not raised by the parties.

For the above-referenced reasons, the Tenth Circuit affirmed the lower court's decision to grant summary judgment for the defendants on all grounds.

***Lawson v. Spirit AeroSystems, Inc.*, 135 F.4th 1186 (10th Cir. Apr. 25, 2025).**

INDUSTRY

Transportation & Mobility

TAKEAWAY

Under Kansas law, a noncompetition clause, condition precedent to the receipt of future benefits — such as continued vesting of incentive equity and consulting payments — are generally enforceable and need not satisfy Kansas's reasonableness test applicable to traditional noncompetes or penalty-for-competition clauses.

DETAILS

Procedural Posture: Appeal from final judgment of the US District Court for the District of Kansas following remand. After an initial bench trial judgment for the former CEO, the Tenth Circuit reversed and remanded to determine the enforceability and severability of a noncompete provision. On remand, the district court held the noncompetition condition precedent enforceable and severed injunctive remedies. The Tenth Circuit affirmed and denied the employee's motion to certify a question to the Kansas Supreme Court.

Factual Background: The former CEO of Spirit Aerosystems, Inc retired under a Retirement Agreement that (1) retained him as a paid consultant and (2) allowed several hundred thousand previously awarded but unvested long-term incentive shares to continue vesting "as if" he was an active employee. The retirement agreement expressly conditioned ongoing payments and continued vesting on his compliance with the noncompete in his employment agreement, which was incorporated and extended through the consulting term. After retirement, the former CEO engaged with a hedge fund conducting a proxy campaign at Arconic, a Spirit supplier and competitor in aerostructures. After determining that the engagement breached the noncompete condition, Spirit ceased consulting payments and terminated continued vesting. At the earlier appeal stage, the Tenth Circuit held that the engagement triggered forfeiture of future benefits but remanded for enforceability analysis.

Court's Decision: The Tenth Circuit affirmed, reasoning that Kansas law does not subject a noncompetition condition precedent to the same reasonableness scrutiny as a traditional noncompete or penalty-for-competition clause.

- **Scope of Kansas law:** Drawing on Kansas's strong commitment to freedom of contract, the court determined that the Kansas Supreme Court would distinguish between: (1) restraints enforceable by penalties or injunctions that can deprive a worker of livelihood and require reasonableness review (e.g., Weber/Varney contexts) and (2) conditions precedent that offer a choice and merely condition receipt of future benefits. The latter does not warrant reasonableness review. The court found this view consistent with Kansas precedent recognizing distinctions between forfeiture-for-competition or penalty provisions and benefit-conditioning clauses, and with the general weight and recent trend of authority (akin to the employee-choice line).
- **Future benefits v earned compensation:** The unvested long-term incentive plan (LTIP) awards had no cash value at retirement and would have been canceled absent the retirement agreement. The arrangement extended only the opportunity for future vesting, conditioned on non-competition. Reasonableness review was appropriate because the forfeited interests were future benefits rather than previously earned compensation.

***Snyder v. Beam Techs., Inc.*, 147 F.4th 1246 (10th Cir. 2025).**

INDUSTRY

Insurance & Reinsurance

TAKEAWAY

This case granted the defendant's motion for summary judgment on a trade secret misappropriation claim where the plaintiff could not establish that he took reasonable measures to maintain the secrecy of the information at issue under either state or federal law.

DETAILS

Procedural Posture: The plaintiff appealed the district court's grant of the defendant's motion for summary judgment.

Factual Background: The plaintiff, John Snyder, while working at a life insurance company, obtained a nationwide list of tens of thousands of insurance brokers. He brought that list to his new employer, Beam. Snyder claimed that Beam paid him "off the books" for the list.

While employed by Beam, Snyder created three state-specific broker spreadsheets using the nationwide list from his previous employer. Snyder emailed those lists to other Beam employees but inadvertently included the nationwide list as a separate tab in each state-specific spreadsheet.

After Beam terminated Snyder's employment, Snyder sued Beam under the DTSA and the CUTSA for trade secret misappropriation. The district court granted Beam's motion for summary judgment on the grounds that Snyder failed to present sufficient evidence that he "owned" the broker list.

Court's Decision: The Tenth Circuit affirmed summary judgment for Beam on different grounds. The Tenth Circuit declined to address the "ownership" issue, given that it implicated a key difference between the DTSA and the CUSTA — the federal statute authorizes suit by the "owner" of a trade secret, whereas the state statute authorizes suit by one in "possession" of a trade secret.

Instead, the Tenth Circuit affirmed summary judgment, finding no reasonable jury could find that Snyder took reasonable measures to maintain the secrecy of the broker list, which is a requirement under both state and federal law. Snyder did not mark any of the lists confidential, password-protect the lists, require confidentiality agreements, notify recipients of the list of any access or use restrictions, and object to Beam's use of the lists or attempt to claw them back after realizing he sent the nationwide list. The Tenth Circuit rejected Snyder's argument that his maintaining the list on his personal computer, a USB drive, and his password-protected work computer (without any markings indicating the list was confidential or a trade secret) was sufficient to establish reasonable measures to maintain the secrecy of the list.

***Precision Weather Sols., Inc. v. Hudson Ins. Co.*, No. 24-2258-DDC-GEB, 2025 WL 2676453 (D. Kan. Sep. 18, 2025).**

INDUSTRY

Agriculture & AgTech

TAKEAWAY

Customers and investors who deploy a vendor's software can face trade secret misappropriation claim exposure where publicly filed litigation puts them on notice that the product embodies misappropriated trade secrets and the trade secret information is clear on the face of the product.

DETAILS

Procedural Posture: Motion to dismiss.

Factual Background: Precision Weather Solutions developed a weather-risk platform relying upon trade secret information, including "a system of meteorological and climatological sensors; the proprietary architecture of the plaintiff's platform and software and its graphical user interface; a weather alerting methodology; and proprietary algorithms and parameters." It alleged that Farmers Edge, initially a customer, misappropriated trade secrets by using shared login credentials and screenshots to replicate features of the platform, which were ultimately deployed in Farmers Edge's products — FarmCommand and InsurTech. The defendants, Hudson and Odyssey — customers and investors for Farmers Edge — then allegedly partnered with and used InsurTech in their crop insurance operations and invested in the product and technology. Related suits were pending in Canada and, later, in the Eastern District of Virginia.

Court's Decision: The court held that Precision plausibly alleged "use" or "acquisition" of its trade secrets by the defendants because the complaint supports a reasonable inference that material aspects of the trade secrets were outwardly disclosed on the face of Farmers Edge's platform — such as the graphical user interface and alerting methodology — distinguishing other cases relied upon by the defendants, which required access to buried source code. Deploying and marketing InsurTech in crop insurance operations constitutes "use" where the product visibly embodies the secrets. The court rejected Precision's theory that insurance due diligence requirements or investment relationships alone supplied "reason to know," finding those assertions conclusory and too attenuated from the origins of the software's research and development. However, the prior litigation filed by Precision against InsurTech directly alleged InsurTech was built on Precision's misappropriated trade secrets, which plausibly put Hudson and Odyssey on inquiry notice thereafter. The court therefore dismissed claims predicated on conduct before the date of the prior-filed lawsuit, but allowed claims based on the later conduct to proceed.

***Military and Veteran Counseling Ctr., LLC d/b/a Freedom Counseling v. Feller Behavioral Health PLLC*, 575 P.3d 1098, 2025 UT 33 (Utah Aug. 14, 2025).**

INDUSTRY

Health Care

TAKEAWAY

A trade-secret misappropriation claim fails absent evidence that the defendant's use of the alleged secret caused the plaintiff's loss. Even where client information is shared, and clients later depart, causation is not established if the record shows clients followed their therapists for independent reasons unrelated to the defendant's use of any confidential information.

DETAILS

Procedural Posture: The plaintiff, a behavioral health care practice operating as Freedom Counseling, sued a competitor, Feller Behavioral Health PLLC (FBH), under Utah's Uniform Trade Secrets Act (UUTSA) based on alleged misappropriation of client information. The district court granted partial summary judgment to Freedom Counseling on liability and denied FBH's motion for summary judgment. On interlocutory review, the Utah Supreme Court reversed, holding Freedom Counseling failed to present a legally sufficient evidentiary basis that FBH's use of the claimed trade secrets caused its alleged damages.

Factual Background: Four Freedom Counseling therapists explored employment with FBH. During pre-hire discussions, FBH's executive director requested information about the therapists' contracts, client bases, and insurance credentialing. Each therapist provided some client-related information, ranging from client names paired with insurer details and member IDs to de-identified initials with insurer names. FBH hired all four therapists, and at least 49 clients followed them to FBH. Freedom Counseling later closed. Freedom Counseling's complaint alleged FBH used client information to facilitate onboarding, set compensation, and prepare billing. Asserting damages based on both unjust enrichment and actual loss.

Court's Decision: Reversing the lower court, the Utah Supreme Court held that Freedom Counseling failed to establish the causation element required for trade-secret misappropriation damages. The record showed clients left because their therapists moved to FBH, not because FBH used personal client information to solicit them. Freedom Counseling identified no evidence of solicitation or other use of client details that produced the loss; its CEO was unaware of any such outreach, and no client reported being contacted by FBH. Although FBH received some personal client information before hiring decisions, the court found those decisions turned on non-personal factors — general client numbers and insurer credentialing — rather than specific client identifiers.

***Applied Predictive Tech., Inc. v. MarketDial, Inc.*, No. 2:19-CV-00496-JNP-CMR, 2025 WL 906182 (D. Utah Mar. 25, 2025).**

INDUSTRY

Business Analytics, Consulting, Private Companies

TAKEAWAY

Because under the DTSA and Utah laws, a prevailing party may be awarded its attorney fees in defending a trade secret claim brought in bad faith, the trade secret asserted by the plaintiff ultimately must be specifically identified, clearly defined, and supported with evidence. If not, and the plaintiff continues to pursue aggressive litigation tactics after it becomes clear that there is no evidentiary support for the existence of a trade secret, the court may award attorney fees upon a finding of both objective speciousness and subjective bad faith.

DETAILS

Procedural Posture: Motion for attorneys' fees.

Factual Background: Applied Predictive Technologies (APT) and MarketDial are competitors in the business analytics industry. APT brought suit against MarketDial for trade secret misappropriation, alleging that the founders of MarketDial had been exposed to APT confidential information in their previous roles at a large consulting firm, which had done work for APT. APT alleged that the founders of MarketDial, prior to leaving the consulting firm, had downloaded APT's confidential information and used it to start the competing company. After several years of heavily contested litigation, the court granted MarketDial's motion for summary judgment because APT had failed to identify any trade secret, let alone that MarketDial had misappropriated it. MarketDial then moved for attorneys' fees under the DTSA, the UUTSA, and Utah's bad-faith litigation statute.

Court's Decision: The court granted the defendants' motion for attorneys' fees, finding that APT's trade secret claims were brought in bad faith. In so deciding, the court applied the widely used two-prong bad-faith test, considering the following:

- **Objective Speciousness:** APT persistently failed to identify a specific trade secret or demonstrate its economic value, even after intensive discovery and extensive litigation. APT's submissions consisted of vague, high-level categories, circular references, and voluminous filings that did not meaningfully identify or define any trade secret. Though MarketDial's founders may have had access to confidential information in the scope of their employment at the consulting firm, there was no evidence that this confidential information implicated any trade secret. Thus, while the claims may have appeared plausible initially at the pleading stage, after extensive discovery request seeking necessary details, the plaintiff failed to provide clarity and evidentiary support but continued to litigate the case.
- **Subjective Misconduct:** Rather than withdrawing the trade secret claims once the lack of evidentiary support became apparent, APT continued its aggressive litigation strategy, flooding the docket with materials and pursuing collateral disputes. Based on APT's behavior, the court found a reasonable inference that APT's objective was to financially burden its smaller

competitor and drive it out of business.

Because the court found that APT's trade secret claim was objectively specious and that APT had engaged in subjective misconduct, it granted MarketDial's motion for attorneys' fees.

ELEVENTH
CIRCUIT

Eleventh Circuit

***Alabama Aircraft Industries, Inc. v. Boeing Company*, 133 F.4th 1238 (11th Cir. 2025).**

INDUSTRY

Transportation & Mobility, National Security

TAKEAWAY

The limitation of liability provision of a teaming agreement barred damages under the MUTSA but did not bar unjust enrichment damages.

DETAILS

Procedural Posture: Following a failed teaming arrangement to bid on an Air Force maintenance contract, Pemco (Alabama Aircraft) sued Boeing for breach of contract and misappropriation under the MUTSA. The district court initially dismissed the trade secret claim on limitations grounds but allowed contract claims to proceed. A jury awarded Pemco direct, out-of-pocket damages on the NDA and master agreement claims. On the first appeal, the Eleventh Circuit reinstated the MUTSA claim under Missouri's statute of limitations and affirmed the contract verdicts. On remand, the district court dismissed Pemco's amended complaint, holding the master agreement's limitation-of-liability clause foreclosed further damages. Pemco appealed.

Factual Background: The parties executed a 2005 teaming agreement comprising three integrated writings: a master agreement, a work share agreement, and an NDA incorporated into the master agreement. The arrangement contemplated joint pursuit of a 2008 Air Force contract. Pemco alleged Boeing used Pemco's proprietary cost, pricing, and bidding methodology to win the award. The verdict for Pemco's contract claims compensated direct, out-of-pocket costs (including solo-bid expenses) but not broader expectancy or punitive measures. The remaining dispute concerned whether the master agreement's liability limitation foreclosed damages for Pemco's revived MUTSA claim and, if not, which remedies remained available.

Court's Decision: The Eleventh Circuit reversed the district court's dismissal of the revived claim, holding:

- The teaming agreement contained a liability limitation clause.
- The limitation clause applies to tort claims intertwined with the teaming relationship, not merely to breach claims. The court read the clause to extend to torts arising from the contractual nexus — here, misappropriation under MUTSA arising from information exchanges within the teaming arrangement.
- The MUTSA claim is an independent statutory tort. Although related to the NDA's confidentiality duties, misappropriation under MUTSA stands apart from breach, and Missouri's statute expressly authorizes two distinct measures: actual loss and unjust enrichment, provided there is no double recovery.

- Unjust enrichment remains available and is not categorically barred by the limitation clause. The court held that Pemco may pursue disgorgement-based unjust enrichment for Boeing's alleged ill-gotten gains and cost savings attributable to misappropriation, so long as those amounts are not duplicative of the direct, out-of-pocket contract damages already awarded. The limitation clause did not list unjust enrichment among barred categories, and unjust enrichment is distinct from "consequential damages," which compensate a plaintiff's loss rather than strip a defendant's gain.

***Cox v. Sunbelt Rentals, Inc.*, 2025 WL 833232 (M.D. Fla. Mar. 17, 2025).**

INDUSTRY

Private Companies, Construction

TAKEAWAY

Sending letters threatening lawsuits to former employees and their new employers based on restrictive covenants in an employment agreement can give rise to a declaratory judgment action by the employees and new employer seeking to invalidate such covenants.

DETAILS

Procedural Posture: The defendant's motion to dismiss declaratory judgment action.

Factual Background: The defendant, Sunbelt Rentals, Inc., sent two demand letters on September 6, 2024, and September 20, 2024, to its former employee Brian Cox and his employer LTC Power Solutions, LLC. The demand letters invoked noncompete and nonsolicit provisions in Cox's employment agreement and threatened litigation against Cox and LTC. Indeed, Sunbelt sued them two weeks after sending the second demand letter. By that time, LTC had hired Cox and other former Sunbelt employees with the possibility of hiring more. In response to Sunbelt's lawsuit, Cox and LTC filed their own lawsuit against Sunbelt for declaratory relief, seeking to invalidate the noncompete and nonsolicit provisions in Sunbelt's employment agreements. Sunbelt moved to dismiss the complaint.

Court's Decision: The court denied Sunbelt's motion to dismiss. In its ruling, the court found the threat of litigation in the demand letters as well as Sunbelt's immediate lawsuit two weeks after the last demand letter as key facts supporting the existence of a justiciable controversy supporting Cox's and LTC's standing to pursue their declaratory relief case against Sunbelt.

***Rotech Healthcare, Inc. v. Carmichael*, No. 6:23-cv-2338-JA-RMN, 2025 WL 2879775 (M.D. Fl. Oct. 9, 2025).**

INDUSTRY

Health Care

TAKEAWAY

Forwarding an employer's detailed referral-source lists and sales notes to a personal email account shortly before departing for a competitor constitutes misappropriation under the DTSA and Florida Uniform Trade Secrets Act (FUTSA), even without proof of post-departure use or disclosure. Such curated customer data — which contains nonpublic decision-maker identities, contact histories, and strategy notes — qualifies as a trade secret where the employer employs reasonable secrecy measures, such as requiring employees to execute confidentiality agreements and keeping such data on password-protected servers.

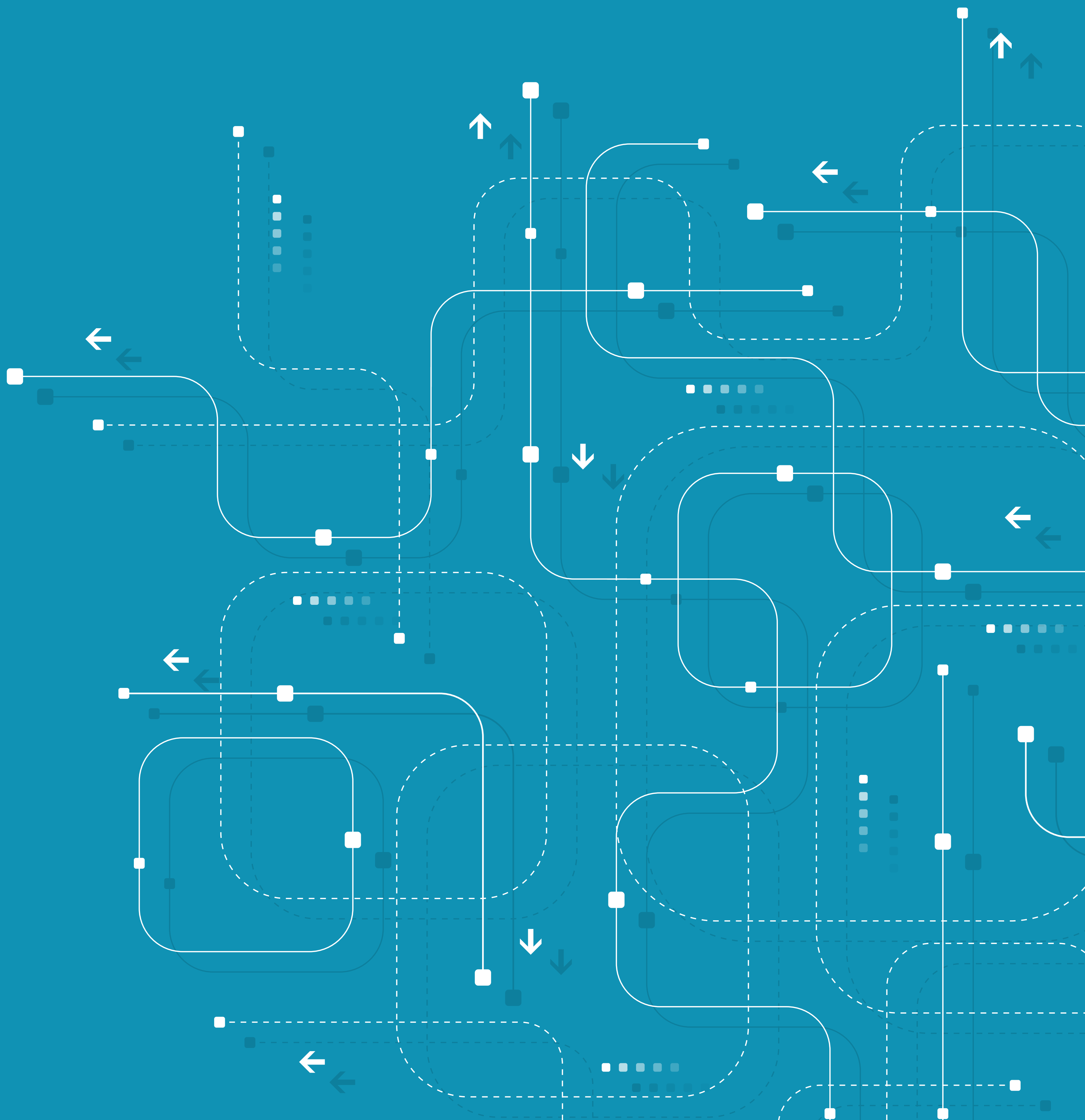
DETAILS

Procedural Posture: The plaintiff's motion for partial summary judgment.

Factual Background: The plaintiff, Rotech Healthcare Inc., is a medical device retailer that sells medical equipment. Rotech hired the defendant as an account executive in 2021. As part of his employment, the defendant signed an employment agreement that contained non-disclosure, nonsolicitation, and noncompetition covenants. The defendant was required to complete weekly call planners and call reports, which were Excel spreadsheets that contained information about referral sources, sales activity, account statuses, and account executives' personal notes. Two days before resigning from the company and joining a competitor, the defendant forwarded his weekly call planner and call report to his personal email account. At the competitor company, the defendant worked for at least 29 of the same referral sources as he did at Rotech. Rotech sued the defendant for misappropriation of trade secrets under the DTSA and the FUTSA, along with other claims related to breach of his employment agreement, tortious interference with business relationships, and breach of the duty of loyalty.

Court's Decision: The court granted the plaintiff's motion for summary judgment in part as to misappropriation of trade secrets under the DTSA and FUTSA and breach of the nondisclosure covenant of the defendant's employment agreement. In granting summary judgment on the trade secret misappropriation claims, the court concluded that the weekly call planner and call report qualified as protectable trade secrets and that the defendant's act of emailing them to his personal account just before resigning constituted misappropriation by acquisition under both the DTSA and FUTSA. The court emphasized that liability for misappropriation of trade secrets does not require proof of post-departure use or disclosure where the acquisition itself was improper. Additionally, the court concluded that the employer's confidentiality measures were sufficient to establish reasonable secrecy under both statutes. As to the contract claim, the court reasoned that the same conduct supported summary judgment for breach of the nondisclosure covenant. The court denied summary judgment on the remaining restrictive covenant and tort claims, however, finding factual disputes that must be resolved by a jury.

FEDERAL
CIRCUIT



Federal Circuit

***ams-OSRAM USA Inc. v. Renesas Electronics America, Inc.*, 133 F.4th 1337 (Fed. Cir. 2025).**

INDUSTRY

AI & Emerging Technologies

TAKEAWAY:

Under Texas law, the date a trade secret becomes "properly accessible" for purposes of measuring a head-start is when it could have been reverse-engineered through proper means, not when it was actually reverse-engineered. Courts may pair equitable disgorgement for misappropriation with a separate reasonable-royalty award for breach of a confidentiality agreement so long as the awards compensate distinct sales avoiding double recovery. Exemplary damages for trade-secret misappropriation may be available even where the monetary remedy is equitable disgorgement, and the amount may be set by a jury.

DETAILS:

Procedural Posture: The case returned to the Federal Circuit following remand proceedings limited to monetary remedies for trade-secret misappropriation under Texas law and breach of a California-governed confidentiality agreement. A first appeal affirmed narrowed trade-secret liability, vacated the initial monetary award, and remanded for a new remedies determination. On remand, a jury issued an advisory disgorgement amount and set exemplary damages; it also awarded reasonable-royalty damages on the contract claim. The district court entered judgment awarding disgorgement, reduced exemplary damages pursuant to Texas statutory caps, reasonable-royalty damages for non-overlapping product sales, prejudgment interest, and attorneys' fees on the contract claim. Both parties appealed; liability was not at issue.

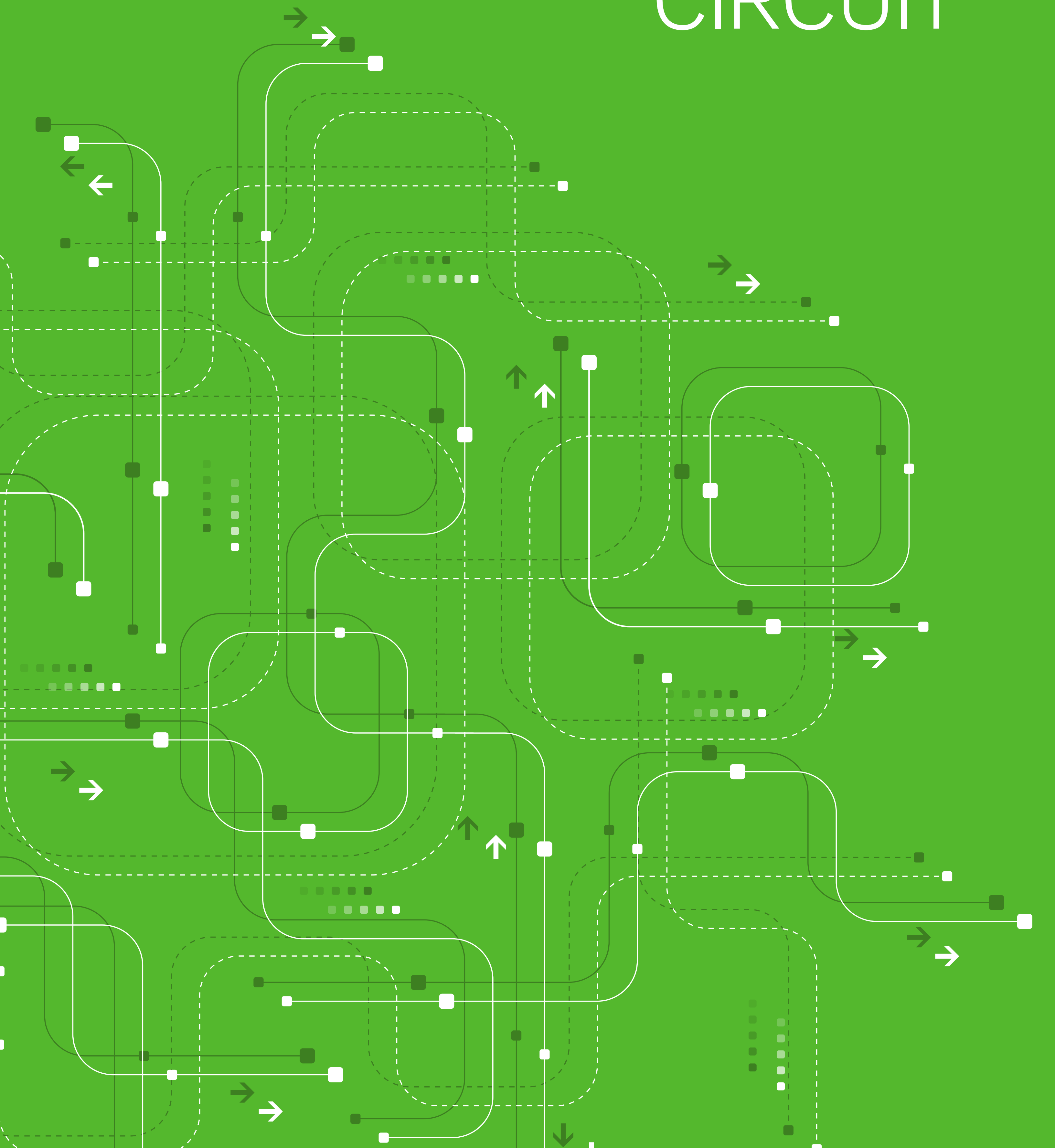
Factual Background: TAOS (now ams-OSRAM USA Inc.) and Intersil (now Renesas Electronics America, Inc.) discussed a potential 2004 merger under a confidentiality agreement expiring June 3, 2007. TAOS shared confidential ambient-light sensor technology used to modulate device screen brightness. After discussions ended in August 2004, Intersil used TAOS's confidential information to accelerate development of competing sensors (including the ISL29003). TAOS publicly released a product embodying the secret by early 2005, from which the information could be reverse-engineered. Intersil obtained "design wins" at Apple for the iPod Touch in September 2006 and later the iPhone 3G, leading to substantial sales.

Court's Decision: The Federal Circuit affirmed in part, reversed in part, vacated in part, and remanded.

- **Trade-Secret Remedies (Texas law):** The court held that the "proper accessibility" date is when the trade secret could have been reverse engineered by proper means from a publicly available product, not the later date when reverse engineering actually occurred.

- **Contract Damages (California law):** The court upheld a separate reasonable-royalty award for breach of the confidentiality agreement. It rejected the double-recovery challenge because the contract royalty and trade-secret disgorgement were awarded on non-overlapping sets of sales.
- **Attorneys' Fees:** Applying California law and the contract's indemnity clause, the court affirmed an award of fees incurred enforcing the confidentiality agreement because the clause encompassed direct liability between the parties and expressly included attorneys' fees arising from breach.

DC
CIRCUIT



DC Circuit

***Clevinger v. Advocacy Holdings, et al.*, 134 F.4th 1230 (D.C. Cir. 2025).**

INDUSTRY

Political Advocacy, Media & Entertainment

TAKEAWAY

Demonstrating irreparable harm is a heavily weighted factor in obtaining a preliminary injunction and failure to demonstrate it is fatal. Further, a loss of customers is not enough to establish irreparable harm unless the financial injury is so great that it threatens the business' continued existence.

DETAILS

Procedural Posture: The DC Circuit affirmed the district court's partial denial of a motion for a preliminary injunction.

Factual Background: The appellee, Advocacy Holdings, Inc., is the operator of OneClickPolitics, a platform that helps organizations connect supporters with policymakers. Advocacy employed Chazz Clevinger as CEO, subject to an agreement with a one-year noncompete and nonsolicitation period and a five-year confidentiality obligation, which included a clause stating the company would suffer irreparable harm if those terms were breached. After Clevinger resigned in 2023, Advocacy alleges he took its customer list, launched two competing ventures, solicited Advocacy's clients, and told some that Advocacy was closing or undergoing major changes with a transition to another platform. Further, Advocacy alleged that he copied a forthcoming version of the OneClickPolitics interface. Advocacy sued for breach of the noncompete agreement and sought a preliminary injunction. It argued that it sustained several injuries, including customer loss and reputational harm. Additionally, Advocacy mentioned a possible third injury, loss of customer trust and goodwill. The district court first denied the preliminary injunction for lack of irreparable harm, then on reconsideration enjoined Clevinger from using Advocacy's platform design and interface but declined to bar him from operating his businesses or soliciting customers.

Court's Decision: The DC Circuit, in affirming the district court's ruling, held that Advocacy had not shown the "irreparable harm" required, explaining that the alleged injuries — loss of customers and reputational harm from purported misstatements during solicitation — were financial in nature and compensable with money damages. The court emphasized that financial losses are rarely irreparable, absent evidence that they are incalculable or threaten the company's continued existence. The court addressed the alleged loss of customer trust and goodwill in a footnote, finding that the argument was both factually and legally insufficient. The court also declined to consider a contractual "irreparable harm" stipulation because Advocacy did not timely raise it in the initial motion before the district court. Finally, the court rejected Advocacy's argument that the factors for a preliminary injunction are to be considered on a "holistic, sliding scale," finding that the failure to show any irreparable harm, alone, is grounds for denying the motion even if the other factors were found to merit such relief.

***Whaleco Inc. v. Shein Tech. LLC*, C.A.No. 23-3706, 2025 WL 2801861 (D.D.C. Sep. 30, 2025).**

INDUSTRY

Fashion & Retail

TAKEAWAY

A plaintiff cannot sue for trade secret misappropriation occurring outside the United States unless: (1) the defendant is a citizen of the United States or an entity organized under its laws; or (2) "an act in furtherance of the offense was committed in the United States." 18 U.S.C. § 1837. The second part of the statute is not met by bare allegations that harm occurred in the United States.

DETAILS:

Procedural Posture: The defendants' motion to dismiss.

Factual Background: The parties are online marketplaces that offer "ultra-fast fashion" products for sale. Whaleco Inc. (Temu) accuses Shein of engaging in an intricate scheme to disrupt its business and slow its growth in the United States by abusing American intellectual property law and foreclosing Temu's access to a limited pool of specialized Chinese suppliers necessary to compete in the market. Temu also alleges Shein stole valuable commercial and financial information and has begun mimicking aspects of Temu's platform that contribute to its popularity. Temu sued Shein and its subsidiary, Shein Technology LLC, for various claims under federal and District of Columbia law. Both the defendants moved to dismiss.

Court's Decision: Temu alleged Shein misappropriated its trade secrets when it summoned Temu's suppliers to Shein's offices in China, seized their phones, and forced them to provide log-in credentials to Temu's seller portal, which in turn gave Shein access to "a variety" of Temu's "commercial and financial information." The DTSA provides that a plaintiff cannot sue for trade secret misappropriation occurring outside the United States unless (1) the defendant is a citizen of the United States or an entity organized under its laws, or (2) an act in furtherance of the offense was committed in the United States. 18 U.S.C. §1837. The court found these trade secret allegations brought the DTSA's bar on extraterritorial application into play. Temu did not meet the statute's first exception, as Shein is not an American corporation. Nor did the second exception apply as the complaint contained no factual allegations to plausibly establish that any "act in furtherance" of the alleged misappropriation took place in the United States. All the alleged conduct took place in China.

Temu essentially argued that it was harmed in the United States, and that "Shein is using the commercial and financial data it accessed to understand Temu's economic positions and gain an advantage in the U.S. market." The court rejected these allegations as inadequate to show acts of misappropriation by use of the trade secrets in the United States. The court found it could not, as Temu requested, infer from attenuated allegations that Shein was "using" its claimed trade secrets in the United States. Temu likewise plead no factual support for its "naked" assertion that Shein was "offering and selling goods incorporating the trade secrets within the District of Columbia." Based thereon, the court found that, even construing the complaint in Temu's favor, it had alleged no facts plausibly suggesting that any act in furtherance of the alleged misappropriation occurred in the United States.

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