

Connecticut

1. What is the statutory authority for trade secret protection in your state?

Connecticut has adopted its version of the Uniform Trade Secrets Act (“CUTSA”), as Conn. Gen. Stat. §§ 35-50 to 35-58. In doing so, it has expanded the definition of “trade secret” to include drawings, cost data, and customer lists (provided certain criteria are met) (Conn. Gen. Stat. § 35-51(d)); and expanded the definition of “improper means” to include searching through trash (Conn. Gen. Stat. § 35-51(a)). It has also omitted willful and malicious misappropriation as a basis for a prevailing party’s entitlement to an award of reasonable attorney’s fees; instead, they may be awarded at the court’s discretion if the claim of misappropriation is made in bad faith, or a motion to terminate an injunction is made or resisted in bad faith. Conn. Gen. Stat. § 35-54.

CUTSA preempts conflicting tort or other state law providing civil remedies for trade secret misappropriation. Conn. Gen. Stat. § 35-57. It does not, however affect contractual remedies, civil liability not based upon misappropriation of a trade secret, criminal liability, or duties to disclose under various statutory schemes. Conn. Gen. Stat. § 35-57(b).

2. What are the elements of a trade secret claim in your state, and are any unique?

A claimant must show (1) that its formula, pattern, compilation, program, device, method, technique, process, drawing, cost data, customer list or other information claimed as a trade secret is in fact a trade secret; (2) that a defendant misappropriated the trade secret; and (3) that the plaintiff suffered actual loss as a direct and proximate cause of the misappropriation. *See News Am. Mktg. In-Store, Inc. v. Marquis*, 86 Conn. App. 527 (2004), *aff’d*, 276 Conn. 310 (2005). To be a protectible, the information claimed as a trade secret must derive actual or potential independent economic value from not being generally known or readily ascertainable by proper means. Conn. Gen. Stat. § 35-51(d). This, in turn, has three elements: (a) the “trade secret” must itself have independent economic value; (b) it must not be generally known to third-persons; and (c) it must not be readily ascertainable by third persons. Finally, the “trade secret” must be the subject of reasonable measures to maintain its secrecy. *See Dreamcatcher Software Development LLC v. Pop Warner Little Scholars, Inc.*, 298 F. Supp.2d 276, 282 (D. Conn. 2004).

3. How specific do your courts require the plaintiff to be in defining its “trade secrets?” (This could include discussing discovery case law requiring particularity.)

As a general matter, courts in the Second Circuit reject trade secrets that are not described with specific and concrete information sufficient so that the party charged with misappropriation “is aware of what information it has allegedly misappropriated.” *Next Communications, Inc. v. Viber Media, Inc.*, 758 Fed. Appx. 46, 48-49 (2nd Cir. 2018). While there is a paucity of Connecticut case law on this issue, it has been held that a plaintiff must “describe with reasonable

specificity the trade secrets that form the basis for its claim” so that the defendants are given “an explanation of plaintiff’s theory of the case before plaintiff gets the benefit of defendant’s discovery.” *Powerweb Energy, Inc. v. Hubbell Lighting, Inc.*, 2012 WL 3113162*2 (D. Conn. 2012). This sequencing of disclosure, which relied upon *DeRubeis v. Witten Technologies, Inc.*, 244 F.R.D. 676 (N.D. Ga. 2007), was further adopted by at least one Connecticut Superior Court judge (*Edgewell Personal Care Co. v. O’Malley*, 2019 WL 7425133*4 (Super. Ct. 2019); a decision in which the Court also noted that the degree of specificity was highly dependent upon the nature of the industry, technology, and claims. Given the limited Connecticut precedent on point, other decisions in the Second Circuit provide useful guidance. See *Big Vision Private Ltd. V. E.I. DuPont De Nemours & Co.*, 1 F.Supp. 3d 224, 257 (S.D.N.Y. 2014), *aff’d sub nom. Big Vision Private Ltd. V. E.I. du Pont de Nemours & Co.*, 610 Fed. Appx. 69 (2d Cir. 2015); *Sit-Up Ltd v. IAC/InterActive Corp.*, 2008 WL 463884*11 (S.D.N.Y. 2008).

4. What is required in your state for a plaintiff to show it has taken reasonable measures to protect its trade secrets? (Preferably answer with practical, factual requirements from decisions.)

Conn. Gen. Stat. § 35-50(d) requires that the trade secret be “the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” The determination of whether steps are adequate is highly fact-specific, *Elm City Cheese v. Federico*, 251 Conn. 59, 81 (1999), and what may be adequate measures under one set of facts may be inadequate under a different set of facts, *Allco Renewable Energy Ltd. v. Freedom of Info. Comm’n*, 205 Conn. App. 144, 167 (2021). What is “reasonable,” then, depends on the nature of the secret, how it is used, and what might result in its disclosure. The lack of confidentiality agreements with employees is not necessarily dispositive where the person possessing the trade secret information was in a position of trust and had demonstrated awareness of the sensitive nature of the information, *Elm City Cheese, supra* at 83, but the Connecticut Supreme Court has emphasized the importance of requiring employees to sign confidentiality agreements, segregating duties, restricting visitor access, and “other appropriate measures.” *Id.* at 86.

For example, the formula created and used by a manufacturer of a multi-component chemical product has been held to remain a trade secret even if visitors are not prevented from seeing some of the ingredients, the mixing area, and even visiting the research lab, where the formula itself is not published and is available only to a small group. See *Dur-A-Flex v. Dy*, 2019 WL 251655*4 (Super. Ct. 2019). Steps that Connecticut courts consider of importance include labeling documents as “confidential,” see *United Technologies Corp v. Turbine Kinetics, Inc.*, 1996 WL 157311 (Super. Ct. 1996), the use of confidentiality agreements when disclosing confidential or secret documents, *Colony Grill Development LLC v. Colony Grill, Inc.*, 2021 WL 723912* 3-4 (D. Conn. 2021), limiting access to information, see *Elm City Cheese, supra* at 82-83, requiring passwords for computer access and forbidding their sharing, *Charter Oak Lending Group, LLC v. August*, 127 Conn. App. 428, 456 (Conn. App. 2011), and using employee training and handbooks discussing confidentiality requirements, *Charter Oak Lending Group, supra*; *Blue Cross & Blue Shield of Connecticut, Inc. v. DiMartino*, 1991 WL 127094*4 (Super. Ct 1991).

5. Does your state apply the inevitable disclosure doctrine? If so, how is it applied?

Because of concerns about the impact upon employees who have not otherwise executed noncompetition or nondisclosure agreements, Connecticut courts examining the inevitable disclosure doctrine have been reluctant to adopt it. When they have applied the doctrine, they have generally done so in a limited fashion. See *Aetna, Inc. v. Fluegel*, 2008 WL 544504, at *6-8 (Super. Ct 2008); *Sunbelt Rentals, Inc. v. McAndrews*, 552 F.Supp.2d 319, 331 (D.Conn. 2021). Factors which have been considered in this context include “(1) [whether] the employers in question are direct competitors providing the same or very similar services; (2) [whether] the employee’s new position is nearly identical to his old one, such that he could not

reasonably be expected to fulfill his new job responsibilities without utilizing the trade secrets of his former employer; and (3) [whether] the trade secrets at issue are highly valuable to both employers.” *Id.* at *5 (internal citations omitted). Thus, while the inevitable disclosure doctrine has been “recognized,” it is considered “disfavored,” and absent “a high degree of similarity between [the accused’s] old and current positions,” a plaintiff is ill-advised to rely solely on that doctrine. *Id.*

6. How have courts in your state addressed the defense that an alleged trade secret is “reasonably ascertainable?” What needs to be shown to prevail on that theory?

CUTSA expressly requires that the alleged “trade secret” have independent economic value from not be generally known or readily ascertainable by proper means. Conn. Gen. Stat. § 35-51(d). Whether the “secret” is generally known or readily ascertainable is a question of fact, and trial court’s findings in that regard will be disturbed only if they are “clearly erroneous” – either because there is no evidence to support it, or even if there is evidence, the reviewing court is “left with the definite and firm conviction that a mistake has been committed.” *Lydall, Inc. v. Ruschmeyer*, 289 Conn. 209, 221 (2007). In a case with multiple trade secret claims, courts are called upon to evaluate each claimed trade secret to determine whether that so-called secret can be readily ascertained by proper means; if it can, trade secret protection does not exist. *See id.* at 224-29. That a “trade secret” is comprised of materials that are generally common and commercially available does not preclude its being a trade secret; instead, the focus is whether the combination itself is generally known or readily ascertainable by proper means. *See Elm City Cheese, supra*, at 74. Courts have rejected trade secret claims when there has been public disclosure through patent publication, even if the patent is later held invalid. *Evans v. General Motors Corp.*, 51 Conn. Supp. 44, 56 (Conn. Super. 2007). The mere possibility of reverse engineering a trade secret is not a defense to misappropriation of a trade secret (*see United Technologies Corp. Pratt & Whitney Division v. Turbine Kinetics, Inc.*, 1998 WL 99185, at *2 (Conn. Super. Ct. Feb. 24, 1998), however, actually reverse engineering a trade secret is a legitimate and good faith means by which to ascertain a trade secret. *See Evans v. Gen. Motors Corp.*, 51 Conn. Supp. 44, 56 (Super. Ct. 2007).

7. What are the most recent “hot button” issues addressed by courts in your state regarding trade secret claims?

Whether a “trade secret” has been sufficiently plead or specified in response to discovery. CUTSA requires numerous items of proof, and the Plaintiff should not assume any element to be automatically proven.

The application of the “inevitable disclosure” doctrine (as discussed above).

The scope of the “knowledge” component for claims against those who are sued not based upon their own misappropriation, but upon “knowingly” acquiring an allegedly misappropriated trade secret from another.

What constitutes “use” of a trade secret, when the charged device or formula is not the same as the alleged secret, but instead is allegedly derived from the trade secret.

Customer, vendor, and similar lists remain an area of dispute. While customer, supplier, and vendor lists may be considered trade secrets, they are so only “if the nature of that information reveals ‘a substantial element of secrecy ... to the extent that there would be difficulty in acquiring the information except by the use of improper means.’” *Eastern Computer Exchange, Inc. v. King*, 2022 WL 2527976, at *5 (D. Conn. 2022). Thus, courts are asked to evaluate the effort used to develop the lists and to maintain their secrecy in determining whether to protect use of such lists. *See Vellali v. Yale University*, 2020 WL 5765380*4 (D. Conn. 2020).

Connecticut courts also continue to struggle with the interplay of trade secret law and restrictive covenants, on the one hand, and the impact upon a person's ability to work subsequent to his or her employment with the company seeking to enjoin future endeavors. Courts will not enjoin use of generalized knowledge or experience, but courts have struggled to define the scope of that knowledge.

8. How does your state's Trade Secret law differ from the DTSA, as the latter is applied in your Circuit?

While CUTSA requires trade secrets to be protected by efforts which are "reasonable under the circumstances", DTSA requires only "reasonable measures." Whether those phrases differ in application in Connecticut remains to be seen.

DTSA specifically provides that it "shall not be construed to preempt or displace any other remedies, whether civil or criminal, provided by the United States Federal, State, commonwealth, possession, or territory law for the misappropriation of a trade secret." 18 U.S.C. § 1838. CUTSA, on the other hand, specifically preempts conflicting tort or other state law providing civil remedies for trade secret misappropriation. Conn. Gen. Stat. § 1838.

In addition, DTSA provides for civil seizure (18 U.S.C. § 1836), while CUTSA does not.