

Illinois

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

The Illinois legislature has codified its version of the Uniform Trade Secrets Act in the Illinois Trade Secrets Act (“ITSA”). 765 ILCS 1065. The statute defines a “trade secret” as “[i]nformation, including but not limited to, technical or non-technical data, a formula, pattern, compilation, program, device, method, technique, drawing, process, financial data, or list of actual or potential customers or suppliers, that: (1) is sufficiently secret to derive economic value, actual or potential, from not being generally known to other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality.” 765 ILCS 1065/2; *See Delta Medical Systems v. Mid-America Medical Systems, Inc.*, 331 Ill.App.3d 777, 780, 265 Ill.Dec. 397, 772 N.E.2d 768 (2002).

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

The three elements of trade secret misappropriation under the ITSA are: “(1) a trade secret existed; (2) the secret was misappropriated through improper acquisition, disclosure, or use; and (3) the owner of the trade secret was damaged by the misappropriation.” *Liebert Corp. v. Mazur*, 357 Ill.App.3d 265, 293 Ill.Dec. 28, 827 N.E.2d 909, 926 (2005) (citing *American Antenna Corp. v. Amperex Electronic Corp.*, 190 Ill.App.3d 535, 538, 137 Ill.Dec. 417, 546 N.E.2d 41 (1989)).

To establish a claim under the ITSA, a plaintiff must first show that the information in question is a trade secret. Whether specific information constitutes a trade secret is a question of fact. *See Scan Top Enterprise Company, Ltd. v. Winplus North America, Inc.*, 2015 WL 4945240 (Aug. 19, 2015); *Nilssen v. Motorola, Inc.*, 963 F. Supp. 664, 675 (N.D. Ill. 1997). Therefore, “the existence of a trade secret is not obvious; it requires an ad hoc evaluation of all the surrounding circumstances.” *Learning Curve Toys v. PlayWoodToys, Inc.*, 342 F.3d 714, 723 (7th Cir. 2003).

Under the ITSA, information is a trade secret if three requirements are met: (a) the information is sufficiently secret, (b) the owner of the information derives value from the information’s secrecy, and (c) the owner has taken reasonable steps to maintain the information’s secrecy. *See Delta Medical Systems v. Mid-America Medical Systems, Inc.*, 331 Ill.App.3d 777, 780, 265 Ill.Dec. 397, 772 N.E.2d 768 (2002).

In addition to establishing the existence of a trade secret, a plaintiff asserting a claim under ITSA must also prove that the defendant misappropriated the trade secret. *PepsiCo, Inc. v. Redmond*, 54 F.3d 1262, 1268 (7th Cir. 1995); *see also Geraci v. Macey*, 2016 WL 3671400, at *4 (N.D. Ill. July 11, 2016).

The ITSA defines “improper means” to include “theft, bribery, misrepresentation, breach or inducement of a breach of a confidential

relationship or other duty to maintain secrecy or limit use, or espionage through electronic or other means.” 765 ILCS 1065/2(a).

A person may improperly acquire another’s trade secret by, among other means, physically taking, copying, or memorizing the trade secret. *See Labor Ready, Inc. v. Williams Staffing, LLC*, 149 F.Supp.2d 398, 412 (N.D. Ill. 2001) (holding that restrictive covenants in employment agreements may protect trade secrets and soliciting such employees to divulge such information may give rise to misappropriation of trade secrets under ITSA); *Lane v. Brocq*, No. 15 C 6177, 2016 WL 1271051, at *3-4 (N.D. Ill. Mar. 28, 2016) (finding the trade secrets of certain materials, client lists, templates, and memorandums were physically taken upon leaving the law firm, thus misappropriated); *Televation Telecommunication Sys., Inc. v. Saindon*, 169 Ill. App. 3d 8, 15-17, 522 N.E.2d 1359, 1363 (2d Dist. 1988), *appeal denied*, 122 Ill. 2d 595, 530 N.E.2d 266 (1988).

Further, to establish a claim for misappropriation of a trade secret, a plaintiff must show that it was damaged by such misappropriation. *Syntex Ophthalmics, Inc. v. Tsuetaki*, 701 F.2d 677, 683 (7th Cir. 1983) (“Under current Illinois law the proper criterion is not ‘actual use’ but whether the trade secret is ‘of value’ to the company.”); *see* 765 ILCS 1065/2(d). To satisfy this element, a plaintiff must establish either actual or threatened use of the trade secret. *See Learning Curve Toys, Inc. v. PlayWoodToys, Inc.*, 342 F.3d 714 (7th Cir. 2003).

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.)

Trade secrets should be alleged in sufficient detail that courts may draw an analogy to other cases where courts sustained allegations of misappropriation of trade secrets. *See Strata Marketing, Inc. v. Murphy*, 317 Ill.App.3d 1054, 1062, 251 Ill.Dec. 595, 740 N.E.2d 1166, 1176-77 (2000). In *Strata*, the plaintiff’s alleged not only that its trade secret was its customer list, but also that its customer list took considerable time, effort, and money to compile. *Id.* In that case, the court concluded that such details were sufficient to allege the existence of a trade secret. *Id.* The court further went on to conclude that the plaintiff pled sufficient facts to illustrate its methods for maintaining secrecy, including, by limiting computer access, requiring employees to sign confidentiality agreements, and keeping customer contracts under lock and key. *Id.*

In what may be a unique case, *Alpha School Bus Co. v. Wagner*, 391 Ill.App.3d 722, 742-43, 331 Ill.Dec. 378, 910 N.E.2d 1134 (2009) the Illinois Appellate Court affirmed the dismissal of a trade secret claim where the plaintiffs failed to attach the document they alleged that the defendants created from the misappropriated trade secret, as required by 735 ILCS 5/2-606. That statute applies any time a plaintiff pleads a claim “founded upon a written instrument.” 735 ILCS 5/2-606. By failing to comply with the statute, plaintiffs’ assertion that the information comprised trade secrets “amount[ed] to little more than a conclusory allegation, which must be rejected on a motion to dismiss.” *Alpha Sch.*, 391 Ill. App. 3d at 743, 910 N.E.2d at 1154 (citations omitted).

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.)

Illinois courts have looked to a variety of factors in assessing the reasonableness of security measures taken by plaintiffs, including whether a plaintiff implemented efforts to keep confidential information secure, informed employees of the information’s confidential value, and required non-disclosure agreements. *See Liebert Corp. v. Mazur*, 357 Ill.App.3d 265, 293 Ill.Dec. 28, 827 N.E.2d 909, 923-24 (Ill.App.Ct.2005). However, confidentiality agreements alone may not enough to meet the reasonableness standard. *See Arcor v. Haas*, 363 Ill.App.3d 396, 299 Ill.Dec. 526, 842 N.E.2d 265, 271 (2005) (holding trial court abused its discretion in granting a preliminary injunction when trade secret holder relied solely on a

confidentiality agreement to protect its information). Rather, Illinois decisions suggest that employers must show its employees' understanding of confidentiality. See *Gillis Associated Indus. v. Cari-All, Inc.*, 206 Ill.App.3d 184, 151 Ill.Dec. 426, 564 N.E.2d 881, 886 (1990) (suggesting plaintiff could show reasonable measures taken by demonstrating "employees understood that lists were to be kept confidential"); *Liebert Corp.*, 293 Ill.Dec. 28, 827 N.E.2d 909, 923-24 (noting that in the absence of a confidentiality agreement, plaintiff must "show, at a minimum, that its employees understood the information was to be kept confidential.").

In *Burt Dickens & Co. v. Bodi*, 494 N.E.2d 817 (Ill. App. Ct. 1986) the court upheld an injunction preventing a former employee from soliciting the former employer's customers. The court cited several reasonable steps that the employer had used to protect its customer information, including: severely restricting employee access to customer expiration lists; disclosing only relevant account information to each salesman; use of a secret code to access information; restricting computer printouts of customer information; shredding and disposing of computer printouts after use; and informing all employees that customer expiration lists were confidential property that could not be disclosed or removed from the office. *Id.* at 820.

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

The inevitable disclosure doctrine is not specifically discussed in the ITSA and is not directly addressed by any Illinois legislation. However, Illinois courts have applied the doctrine to enjoin employees from working for a competitor even though the employees never actually used, disclosed, or even threatened to use or disclose the former employer's trade secrets. See James Pooley, *Fifty-Seventh Judicial Conference on the Third Circuit: Looking Forward to the Next Millennium: The Top Ten Issues in Trade Secret Law*, 70 TEMP. L. REV. 1181, 1186 (1997). The extension of trade secret protection by the courts using the inevitable disclosure doctrine is obvious in view of the Illinois Trade Secret Act, which states that only "actual or threatened misappropriation may be enjoined." Ill. Trade Secrets Act 765 ILL. COMP. STAT. § 1065/3 (2022).

In *PepsiCo, Inc. v. Redmond*, 54 F.3d 1262 (7th Cir. 1995), a soft drink manufacturer brought an action against its competitor and former managerial employee, seeking to prevent its employee from divulging manufacturer's trade secrets and confidential information in his new job with its competitor and from assuming any duties with its competitor relating to beverage pricing, marketing, and distribution. The United States District Court for the Northern District of Illinois granted an injunction and appeal was taken. *Id.* at 1267. The Court of Appeals, applying Illinois law, held that the soft drink manufacturer established that its managerial employee would inevitably disclose PepsiCo's trade secrets to its competitor if he accepted the competitor's offer of employment, warranting preliminary injunctive relief under the ITSA. *Id.* at 1272. The *PepsiCo* court specifically stated that "[t]he defendants are incorrect that Illinois law does not allow a court to enjoin the 'inevitable' disclosure of trade secrets." *PepsiCo*, 54 F.3d at 1269.

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?

"[W]hether the information sought to be protected qualifies as a trade secret focuses fundamentally on the secrecy of such information . . . the information at issue must be substantially secret to impart economic value to both its owner and its competitors because of its relative secrecy." *Pope v. Alberto-Culver Co.*, 296 Ill.App.3d 512, 515, 230 Ill.Dec. 646, 694 N.E.2d 615, 617 (1998). This requirement precludes "protection for information not generally known to the public but clearly understood in a particular industry." *Service Centers of Chicago, Inc. v. Minogue*, 180 Ill.App.3d 447, 454, 129 Ill.Dec. 367,

535 N.E.2d 1132, 1136 (1989) (quoting *M. Jaeger, Trade Secrets Law* § 3.04, at 3-34 (1988)). In addition, “[w]here information can be readily duplicated without considerable time, effort, or expense, it is not a trade secret.” *Stenstrom Petroleum Services Group, Inc.*, 375 Ill.App.3d at 1091, 314 Ill.Dec. 594, 874 N.E.2d at 972.

In *McCann Construction Specialties Co. v. Bosman*, 44 Ill.App.3d 1020, 1023, 3 Ill.Dec. 655, 358 N.E.2d 1340, 1342 (1977), the court held that a construction supply company’s list of customers was not a trade secret where “there was no proof that the names on [the] list were not publicly available to anyone by the use of, or reference to, the yellow pages of the telephone directory or trade directories in the areas served by the parties.” The court noted that the company’s list contained “names of well-known contractors, utility companies[,] and various park districts and municipal bodies.” *Id.*

Likewise, in *Office Mates 5, North Shore, Inc. v. Hazen*, 234 Ill.App.3d 557, 575, 175 Ill.Dec. 58, 599 N.E.2d 1072, 1084 (1992), a personnel placement agency maintained that it had a protectable interest in its client information, which included the following: the client’s name, address, and key contact person; the client’s benefit package; the type of word-processing equipment the client used; its products and services; the number of its employees; the fee the client was willing to pay for placement; and the history of placements. The court held that the client information was not protectable because the information was “readily available to anyone in the business capable of canvassing or finding a directory, whether it be the Yellow Pages or a specialized directory, placing a cold call to that business, and asking specific questions designed to elicit the information above.” *Id.*

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

Application of the ITSA has not been uniform. One area of uncertainty is 765 ILCS 1065/8’s displacement common law claims, but of course the legislature has explicitly excluded contractual and criminal remedies through this preemption provision, regardless of whether these claims are based upon misappropriation of a trade secret. However, other claims preempted by the act are not identified. ITSA merely states that it displaces “conflicting tort, restitutionary, unfair competition, and other laws of this State providing civil remedies for misappropriation of a trade secret.” 765 ILCS 1065/8(a). Additionally, the preemption provision does not apply to “[o]ther civil remedies that are not based upon misappropriation of a trade secret.” 765 ILCS 1065/8(2). Defining the limits of the preemption provision has proven challenging for Illinois courts.

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

The ITSA is similar to the Defend Trade Secrets Act of 2016 (“DTSA”) in most respects. However, unlike ITSA, the DTSA includes a civil seizure remedy. Under the DTSA, upon ex parte application by the trade secret owner, a court can “issue an order providing for the seizure of property necessary to prevent the propagation or dissemination of the trade secret that is the subject of the action.” 18 U.S.C. § 1836(b)(1). The DTSA’s civil seizure mechanism provides victims of trade secret theft a tool to immediately stop dissemination of stolen proprietary information. 18 U.S.C. § 1836(b)(2)(C).