

Indiana

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

Indiana Uniform Trade Secret Act (“IUTSA”): Ind. Code §§24-2-3-1 through 24-2-3-8

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

Indiana adopted the Uniform Trade Secret Act “substantially as promulgated[.]” *Amoco Prod. Co. v. Laird*, 622 N.E.2d 912, 917 (Ind. 1993).

Under the IUTSA, the Plaintiff must demonstrate that the information constitutes a “trade secret” and that the Defendant “misappropriated” that trade secret. *See CoMentis, Inc. v. Purdue Research Found.*, 765 F.Supp.2d 1092, 1100 (N.D. Ind. 2011).

“Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, 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. Ind. Code § 24-2-3-2.

The term “trade secret” is “one of the most elusive and difficult concepts in the law to define.” *Amoco Prod. Co. v. Laird*, 622 N.E.2d 912, 916 (Ind. 1993). “No general or invariable rule can be laid down to govern the determination of whether a device, process, or other compilation of information should be classified as a trade secret.” *Id.* Cases interpreting that statutory definition have identified the following four characteristics of a trade secret: “(1) information, (2) which derives independent economic value, (3) is not generally known, or readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and (4) is the subject of efforts reasonable under the circumstances to maintain its secrecy.” *Steve Silveus Insurance, Inc. v. Goshert*, 873 N.E.2d 165, 179 (Ind.App. 2007; *see Hydraulic Exchange & Repair, Inc. v. KM Specialty Pumps, Inc.*, 690 N.E.2d 782, 785-86 (Ind.App. 1998). “Whether information constitutes a trade secret is a fact-sensitive determination, but ultimately, it is a determination for the court to make as a matter of law.” *Silveus v. Goshert*, 873 N.E.2d at 179.

“Misappropriation” is defined under Ind. Code § 24-2-3-2 as: Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means.

“Improper means” includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain the secrecy, or espionage through electronic or other means.” *Id.*

Disclosure or use of a trade secret of another without express or implied consent by a person who:

Used improper means to acquire knowledge of the trade secret;

At the time of the disclosure or use, knew or had reason to know that his knowledge of the trade secret was:

Derived from or through a person who had utilized improper means to acquire it;

Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use;

Before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

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.)

See Section 2(a), supra.

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.)

Indiana does not require absolute secrecy in order to obtain trade secret protections. The information must be “the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Ind.Code §24-2-3-2. The Indiana Act “requires the owner of alleged trade secrets to make reasonable, though not overly extravagant, measures to protect its secrecy, and absolute secrecy is not required.” *Patriot Homes, Inc. v. Forest River Housing, Inc.*, 2007 Westlaw 2782272, at *3 (N.D.Ind.), citing *Northern Electric v. Torma*, 819 N.E.2d at 427. “The owner may disclose information in confidence to employees or others without losing the legal protection of the trade secret, but a disclosure outside a confidential relationship destroys the legal protection.” *Flotec, Inc. v. Southern Research, Inc.*, 16 F.Supp.2d 992, 1000 (S.D.Ind. 1998).

In *Zemco Manufacturing, Inc. v. Navistar International Transportation Corp.*, 759 N.E.2d 239, 246 (Ind.App. 2001), the court listed the following examples of actions that may be taken to further a finding that the “secrecy” element of a trade secret is met:

Requiring employees to sign confidentiality agreements or otherwise advising them of the confidential nature of the process;

Posting warning or cautionary signs, or placing warnings on documents;

Requiring visitors to sign confidentiality agreements, sign in, and shielding the process from their view;

Segregating information;

Using unnamed or code-name ingredients; and

Keeping secret documents under lock.

Although defendants often attack the lack of a signed confidentiality agreement (and the existence of such a signed document does help), the failure to have one is not fatal to a trade secret claim. See *Zemco*

Manufacturing, 759 N.E.2d at 247 (noting that “an explicit promise of confidentiality is not necessary if the recipient of the information knew or should have known that the information was a trade secret and the owner expected the recipient to keep the information secret.”).

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

Indiana has recognized the doctrine but only on “extreme facts.” *Dearborn v. Everett J. Prescott, Inc.*, 486 F.Supp.2d 802, 820 (S.D. Ind. 2007) (citing *Ackerman v. Kimball Int’l, Inc.*, 652 N.E.2d 507, 510-11 (Ind. 1995)). In *Ackerman*, the Indiana Supreme Court found that although the covenant not to compete between the employee and former employer was not enforceable, an injunction was still proper because “enjoining Ackerman from working for Kimball’s competitors for a year was arguably necessary to meet the threat of disclosure of Kimball’s trade secrets. Were the trial court not permitted, on facts such as these, to enjoin Ackerman for a limited period from being employed by any of Kimball’s competitors, Kimball might, under [IUTSA], have a right without a remedy.” *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?

In determining whether information is “readily ascertainable” under the definition of a trade secret, “Indiana courts consider the degree of time, effort, and expense required for a defendant to acquire or reproduce the alleged trade secret by proper means.” *Hawkins v. Flambeau, Inc.*, 2007 Westlaw 2710947, at *4 (S.D.Ind.), citing *Laird*, 622 N.E.2d at 918-19. As long as “the information can be readily duplicated without involving considerable time, effort or expense, then it is not secret.” *Laird*, 622 N.E.2d at 918-19. Information does not have to be “unique or novel” to be considered a trade secret. *Hawkins*, 2007 Westlaw 2710947, at *4 n.7.

Amoco Production Co. v. Laird, 622 N.E.2d 912 (Ind. 1993) provides good insight into the scope of “readily ascertainable” under Indiana law. In the case, Amoco, a corporation engaged in the identification and production of new sources of oil in the U.S., formed a team of experts in April 1991 to determine the oil reserve potential of a project area with specificity. *Id.* at 914. The team reviewed published literature from the United States Geologic Survey and examined substantial territorial documentation kept at Amoco’s library. *Id.* The team narrowed the area further after additional assessments of geological fault lines and fracture swarms. *Id.* Amoco then conducted microwave radar studies in the region. *Id.* A dissatisfied employee shared identified locations with potential oil reserves with Amoco’s competitor. *Id.*

Amoco sought a preliminary injunction to enjoin its competitor from utilizing the oil reserves found in the region as the region was considered a “trade secret” of Amoco. *Id.* at 915. The competitor argued that the information to find the oil reserves was “readily ascertainable by other proper means” and therefore was not a protectible trade secret. *Id.* Although the oil reserves could have been found utilizing publicly available information, there was a “substantial research investment” required to obtain such information. *Id.* at 918-919 (citing cases). “[W]here the duplication or acquisition of alleged trade secret information requires a substantial investment of time, expense, or effort, such information may be found ‘not being readily ascertainable’ so as to qualify for protection under [IUTSA].” *Id.* at 918. Although Amoco utilized public information in a known way, “Amoco’s exploratory effort was nevertheless a unique undertaking” so as to qualify for trade secret protection. *Id.*

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

One recent “hot button” issue is whether IUTSA preempts a breach of fiduciary duty claim against a

former employee? IUTSA generally preempts other causes of action by displacing “all conflicting law of [the] state pertaining to the misappropriation of trade secrets, except contract law and criminal law.” *Chroma Cars*, 2012 WL 1686530 at *5 (citing *HDNet LLC v. N. Am Boxing Council*, 972 N.E.2d 920, 922-23 (Ind. Ct. App. 2012)). *HDNet* held that the claim for “idea misappropriation” was preempted by IUTSA because the claim “merely outlines another allegation of civil misappropriation of [plaintiff’s] idea.” *HDNet*, 972 N.E.2d at 925. In *Chroma Cars*, the Northern District of Indiana had to consider whether a breach of fiduciary duty claim against a former employee would fall within the scope of allegations that “merely outline[]” elements of trade secret misappropriation. The Northern District of Indiana has held on now two separate occasions that elements of breach of fiduciary duty may fall outside the facts for trade secret misappropriation to avoid preemption. *Chroma Cars*, 2022 WL 1686530 at *5 (fiduciary duty claim rested on “the act of solicitation or wrongful communications – improper competition – rather than the misuse of confidential information.”); *Wagner-Meinert Engineering, LLC v. TJW Industrial, Inc.*, 2022 WL 581010 (N.D. Ind. Feb. 25, 2022) (relying on definition of “pertaining to” to interpret scope of preemption of IUTSA).

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

IUTSA and the federal DTSA contain similar definitions, elements, and remedies and can be analyzed simultaneously. See *Chroma Cars, LLC v. Harris*, 2022 WL 1686530 (N.D. Ind. May 25, 2022).