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Kansas

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

The statutory authority for trade secret protection in Kansas is the Kansas Uniform Trade Secrets Act, K.S.A. § 60-3320, *et. seq.*

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

To establish a claim under the KUTSA, a plaintiff must show: "(1) the existence of a trade secret, (2) the acquisition, use, or disclosure of the trade secret without consent; and (3) that the individual acquiring, using, or disclosing the trade secret knew or should have known the trade secret was acquired by improper means." *API Americas Inc. v. Miller*, 380 F. Supp. 3d 1141, 1148 (D. Kan. 2019) (citing *Chris-Leef Gen. Agency, Inc. v. Rising Star Ins. Inc.*, 2011 WL 5039141, at *4 (D. Kan. 2011) (listing elements of KUTSA misappropriation claim) (citing K.S.A. § 60-3320)).

"In an action claiming unauthorized use of a trade secret, the threshold inquiry is whether or not there [is] a trade secret to be misappropriated." *All West Pet Supply Co. v. Hill's Pet Prods. Div., Colgate–Palmolive Co.,* 840 F.Supp. 1433, 1437 (D.Kan.1993) (citing *Koch Eng'g Co. v. Faulconer,* 227 Kan. 813, 610 P.2d 1094, 1104 (1980). The KUTSA defines a trade secret as: "information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." K.S.A. § 60–3320(4).

These elements are not unique in that Kansas adopted the Model Uniform Trade Secrets Act.

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.)

Under Kansas law, a plaintiff must describe "the subject matter of their trade secrets in sufficient detail to establish each element of a trade secret." *Bradbury Co. v. Teissier-duCros*, 413 F. Supp. 2d 1209, 1222 (D. Kan. 2006). Plaintiff has the burden under the KUTSA to define its trade secrets with the precision and particularity necessary to separate it from the general skill and knowledge possessed by others. *BioCore, Inc. v. Khosrowshahi*, 96 F.Supp.2d 1221, 1231 (D. Kan. 2000) (finding that customer lists containing public information that could be complied by a third party may be entitled trade secret protection if the company expends a great deal of time, effort, and expense in developing such lists).

At the discovery stage, it is sufficient to satisfy the "reasonable specificity" element for a plaintiff to identify documents by Bates number it contends contain

trade secrets. *Sprint Communs. Co. L.P. v. Charter Communs.*, 2020 U.S. Dist. LEXIS 244348, at *12 (D. Kan. Dec. 30, 2020) (denying motion to compel more detailed interrogatory answers). Such descriptions are sufficiently specific to inform a party of the trade secrets allegedly misappropriated and allow counsel to inquire further in additional written discovery or depositions. *Id.* On the other hand, broad descriptions such as "proprietary processes" and "industry product knowledge" (without identifying specific documents) is insufficient, and a court will compel a full interrogatory answer. *Gov't Benefits Analysts, Inc. v. Gradient Ins. Brokerage, Inc.*, 2012 U.S. Dist. LEXIS 113223, at *14-15 (D. Kan. Aug. 13, 2022) (approving use of "contention" interrogatories under Rule 33, requiring parties to apply law to facts and identify trade secrets).

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.)

Kansas requires a trade secret to be subject to efforts that are reasonable under the circumstances to maintain its secrecy. K.S.A. § 60-3320(4). Accordingly, "Kansas law does not require the holder of a trade secret to maintain its complete secrecy; rather Kansas law requires merely that the holder of a trade secret exercise reasonable efforts under the circumstances to maintain its secrecy." *Bradbury Co. v. Teissier-duCros*, 413 F. Supp. 2d 1209, 1222 (D. Kan. 2006) (quoting *Fireworks Spectacular, Inc. v. Premier Pyrotechnics, Inc.*, 107 F.Supp.2d 1307, 1310 (D. Kan. 2000)), K.S.A. § 3320(4)ii. A mere lapse in a plaintiff's security procedure does not support the notion they have failed to take reasonable measures to protect their trade secrets. *Sprint Commc'ns Co. L.P. v. Charter Commc'ns, Inc.*, 2020 WL 4734836 at *9 (D. Kan. Aug. 14, 2020). Trade secrets disclosure as the result of a good-faith mistake may not destroy the trade secret classification, especially if the trade secret holder promptly takes action to rectify their mistake. *Fireworks Spectacular, Inc. v. Premier Pyrotechnics, Inc.*, 147 F. Supp. 2d 1057, 1066 (D. Kan. 2001).

The Supreme Court of Kansas upheld the Kansas Court of Appeals' holding that the plaintiff had taken reasonable measures to protect its trade secrets where plaintiff (1) told employees that the information was confidential, (2) employees were instructed not to give the information to customers or potential customers, and (3) personnel were instructed to "conceal key ingredients" from visitors. *Progressive Prods. v. Swartz*, 292 Kan. 947, 258 P.3d 969, 957 (2011).

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

Although some Kansas courts have recognized the inevitable disclosure doctrine, they have not directly addressed it. *Bradbury Co. v. Teissier-duCros*, 413 F. Supp. 2d 1203, 1209 (D. Kan. 2006). In *CGB Diversified Servs., Inc. v. Adams*, the court stated it did not need to address whether the doctrine was viable in Kansas because the plaintiff failed present facts that supported the theory. 2020 WL 1847733 at *3 (D. Kan. Apr. 13, 2020); *see also Sprint Corp. v. DeAngelo*, 12 F. Supp. 2d 1188, 1994 (D. Kan. 1998).

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?

The Kansas Uniform Trade Act requires that information must not be generally known or be readily ascertainable by proper means to meet trade secret classification requirements. K.S.A. § 60-3320(4)(i).

Merely public information that can be compiled by third parties will not be protected as a trade secret. *Fireworks Spectacular, Inc. v. Premier Pyrotechnics, Inc.*, 147 F. Supp. 2d 1057 (D. Kan. 2001). However, the ultimate question is not whether information is publicly ascertainable from public sources. *Id*. When the plaintiff invests a great amount of time, effort, and expense, which cannot be duplicated without investing

similar resources, the information is not likely to be considered reasonably ascertainable. *Id*.; *see Gov't Benefits Analysts, Inc. v. Gradient Ins. Brokerage*, Inc., 2012 WL 3238082 at *8 (D. Kan. Aug. 7, 2012) (stating that the costs and expenses associated with development is a relevant factor in determining whether to extend trade secret classification on a matter).

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

The most recent "hot button" issue arising under the KUTSA involves the Plaintiff's ability to plead sufficient facts in the early stages of litigation. In *Equity Bank v. McGregor*, the plaintiff sought a temporary restraining order (TRO) after numerous clients switched their accounts to a former employee's new wealth advisory firm. 2022 WL 1102640 at *7 (D. Kan. Apr. 13, 2022). The court denied the plaintiff's temporary restraining order because the plaintiff's failed to demonstrate a substantial likelihood of success on the merits of their claims against the defendant. *Id*. Based on the decision, it is evident that courts are unwilling to act when the plaintiff has merely plead a cause of action based on information and belief. *Id*. In *Willdan Energy Sols. v. Millig LLC*, however, the plaintiff was granted leave to amend the complaint after learning that significant evidence existed to substantiate the plaintiff's position under the KUTSA. 2022 U.S. Dist. LEXIS 10077 at *1 (D. Kan. Jan. 19, 2022). Through discovery, the plaintiff's learned that several defendants were "consulting with, performing work for, or otherwise acting in the interest of [their new employer] while still employed by [their former employer]." *Id.*

The District of Kansas has held that the "ultimate sufficiency of a party's factual showing of a trade secret is not properly addressed on a motion to dismiss." *CGB Diversified Servs. v. Forsythe*, 2020 U.S. Dist. LEXIS 84013, at *13 (D. Kan. May 13, 2020). However, merely alleging "on information and belief" that a defendant had access to trade secrets, accessed information, and went to work for a competitor, is insufficient to satisfy the plausibility standard of pleading. *Id.* at *7 (D. Kan. Apr. 13, 2020) (dismissing DTSA claim without prejudice).

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

The KUTSA and DTSA are very similar in almost all respects. Similar to the KUTSA, the DTSA provides a private cause of action for misappropriation of a trade secret. *See* 18 U.S.C. § 1836(b)(1). The elements required to establish a claim for misappropriation are essentially the same under both the DTSA and the KUTSA. *API Americas Inc. v. Miller*, 380 F. Supp. 3d 1141, 1147–1148 (D. Kan. 2019). *See, e.g.*, *Video Gaming Techs., Inc. v. Castle Hill Studios LLC*, 2018 WL 3437083, at *4 (N.D. Okla. 2018) (listing elements of misappropriation claim under the DTSA); *Arctic Energy Servs., LLC v. Neal*, 2018 WL 1010939, at *2 (D. Colo. 2018) (same); *Chris-Leef Gen. Agency, Inc. v. Rising Star Ins. Inc.*, 2011 WL 5039141, at *4 (D. Kan. 2011) (listing elements of KUTSA misappropriation claim (citing K.S.A. § 60-3320)). However, under the DTSA, a trade secret must also 'relate to a product or service used in, or intended for use in, interstate or foreign commerce." *Assessment Techs. Inst., LLC v. Parkes*, 2022 WL 1102461 at *21 (D. Kan. Mar. 2, 2022) (quoting 18 U.S.C. § 1836(b)(1).