

Louisiana

George Fagan
gfagan@leakeanderson.com

Patrick Wartelle
pwartelle@leakeanderson.com

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

The statutory authority for trade secret protection in Louisiana is the Louisiana Uniform Trade Secrets Act, La. Stat. Ann. § 51:1431, *et. seq.*

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

To recover damages under the Act, the plaintiff must prove (1) the existence of a trade secret, (2) a misappropriation of the trade secret, and (3) actual loss caused by the misappropriation. *Reingold v. Swiftships, Inc.*, 126 F.3d 645, 648 (5th Cir. 1997).

These elements are not unique in that Louisiana 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 the Louisiana Uniform Trade Secrets Act, LSA–R.S. 51:1431 et seq., the term ‘trade secret’ means information, including a formula, pattern, compilation, device, method, technique or process that derives independent economic value, actual or potential, from not being generally known or readily ascertainable by proper means by others who could obtain economic value from its disclosure and is subject to reasonable efforts to maintain secrecy.” *Fox v. Fox*, 49,619 (La. App. 2 Cir. 4/22/15), 164 So.3d 359, 364, *writ not considered*, 2015-1162 (La. 9/18/15), 177 So.3d 1063. The threshold inquiry is whether a legally protectable trade secret actually exists.” *Id.* Whether something constitutes a trade secret is a question of fact.” *Id.* “A customer list or special pricing list may constitute a trade secret if efforts are made to maintain its secrecy.” *Id.*

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.)

The LUTSA adopts the concept of relative secrecy rather than absolute secrecy. *Sheets v. Yamaha Motors Corp., U.S.A.*, 849 F.2d 179, 183 (5th Cir. 1988). Comment (f) to La. R.S. 51:1431 provides: “Reasonable efforts to maintain secrecy have been held to include advising employees of the existence of a trade secret, limiting access to a trade secret on a ‘need to know basis’, and controlling plant access. On the other hand, public disclosure of information through display, trade journal publications, advertising, or other carelessness can preclude protection . . . Reasonable use of a trade secret including control disclosure to employees and licensees is consistent with the requirement of relative secrecy.” The efforts required to maintain secrecy are those reasonable under the circumstances, and courts do not require extreme

and unduly expensive procedures to be taken to protect trade secrets. *Tubular Threading, Inc. v. Scandaliato*, 443 So.2d 712, 714 (La. App. 1983). A disclosure of a trade secret to others who have no obligation of confidentiality extinguishes the property right in the trade secret. *Sheets v. Yamaha Motors Corp., U.S.A.*, 849 F.2d 179, 183-184 (5th Cir. 1988); *Tubos De Acero De. Mexico v. American International Investment*, 292 F.3d at 483.

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

Louisiana courts have not applied this doctrine.

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?

“A trade secret is information that has independent economic value because it is not generally known or readily ascertainable and efforts are taken to maintain the secrecy of the information.” *Marine Pile Drivers, L.L.C. v. Welco, Inc.*, 43,498 (La. App. 2 Cir. 8/13/08), 988 So.2d 878, 881. “Where an item is unpatented and available on the open market, it would seem to be readily available to the public, including defendants, and capable of duplication and, thus, not a protectable trade secret.” *Id.*

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

There are no “hot button” issues regarding trade secrets under Louisiana law.

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

“[T]he definitional sections of the DTSA and [the LUTSA] are very similar.” *Source Prod. & Equip. Co. v. Schehr*, 2017 WL 3721543, at *2 (E.D. La. Aug. 29, 2017) (comparing 18 U.S.C. §§ 1836, 1839, with LUTSA § 1). Courts analyze whether a plaintiff has sufficiently alleged and proved the existence of trade secret similarly under both Acts. *E.g., MMR Constructors, Inc. v. JB Grp. of LA, LLC*, 2022 WL 1223919, at *4 (M.D. La. Apr. 26, 2022); *H&E Equip. Servs., Inc. v. Harley*, 2022 WL 541774, at *3 (M.D. La. Feb. 23, 2022).