

Massachusetts

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

Massachusetts Uniform Trade Secrets Act, Mass. Gen. Laws ch. 93, § 42, *et seq.*

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

1. The information is a trade secret,
2. The plaintiff took reasonable steps to preserve the secrecy of the information; and
3. The defendant used improper means, in breach of a confidential relationship, to acquire and use the trade secret.

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.)

The courts in Massachusetts have interpreted, through codified legislation, that a trade secret plaintiff must disclose its trade secret prior to the onset of discovery. The disclosure of this trade secret must be stated with “reasonable particularity” under the circumstances of the case to allow the court to determine the appropriate parameters of discovery and to enable reasonably other parties to prepare their defenses. In *Alnylam Pharmaceuticals, Inc. v. Dicerna Pharmaceuticals, Inc.*, 2016 WL 4063565, at *3 (Mass. Super. Apr. 6, 2016), the court further elaborated that the plaintiff, who had previously submitted a lengthy and confusing disclosure of their trade secret, must prepare, and serve a revised trade secret disclosure that describes “with clarity that can be understood by a lay person.” Additionally, the court acknowledged the difficulties that may entail but a better description that identifies the claims with sufficient particularity so that a reader can understand how each claim differs from information in the public domain.

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.)

An employer must maintain secrecy of its trade secrets by taking reasonable protective measures to protect it. The reasonableness of the protective measures taken depends on the circumstances of the case which considers the nature of the information sought to be protected and the conduct of the parties. In addition, Massachusetts requires a holder of a trade secret to take all proper and reasonable steps to keep it a secret and to “exercise external vigilance,” which may require “constant warnings to all persons to whom the trade secret has become known and

obtaining from each an agreement, preferably in writing, acknowledging its secrecy and promising to respect it.” *J.T. Healy & Son, Inc. v. James A. Murphy & Sons, Inc.*, 357 Mass. 728, 738, 260 N.E.2d 723, 730 (1970). In *Data General Corp. v. Grumman Systems Support Corp.*, 825 F. Supp. 340, 358 (D. Mass. 1993), the court considered the following factors:

1. The existence or absence of an express agreement restricting disclosure;
2. The nature and extent of security precautions against acquisitions by unauthorized third parties;
3. The circumstances under which information is disclosed to employees, to the extent that it may be inferred that further disclosure, without the consent of the possessor, is prohibited; and
4. The degree to which information is in the public domain or rendered “readily ascertainable” by third parties through patent application or unrestricted product marketing.

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

As of the date of this publication, Massachusetts courts have neither embraced nor rejected the inevitable disclosure doctrine, but they have upheld non-compete agreements when in favor of legitimate business interests. This contrast between not formally adopting the doctrine but enforcing non-competes showcase a mixed view on the applicability of the 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?

The courts in Massachusetts have not suggested that information that is “reasonably ascertainable” is a defense to trade secret misappropriation. Rather, it is an element that must be proven by the defendant upon asserting that they are a holder of a legitimate trade secret within the meaning of MUTA § 42(4). *Needham Bank v. Guaranteed Rate, Inc.*, 2021 WL 2019287 (Mass. Super. Apr. 17, 2021).

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

There have been certain themes in trade secret claims that are being addressed by courts all around the country. Some of these include: (1) cases discussing a “generally known and readily ascertainable” defense to trade secret misappropriation, most notably in Texas; (2) evaluating the reasonable secrecy efforts of confidentiality, most notably in California and Pennsylvania; (3) addressing the standard of “sufficient trade secret identification,” and (4) navigating the protectable trade secrets in customer identification in a rising tech world, most notably in Oregon and California. There have not been any “hot button” issues in Massachusetts as of the date of this publication.

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

There are some unique features in the DTSA that is not present in MUTSA. Some of these include, Ex Parte Seizures, Whistleblower Immunity and employer notification requirements of it, and the lack of a trade secret identification requirement on trade secret holders. In addition, the DTSA also provides for federal criminal charges for trade secret theft, while the MUTSA is solely a civil action. Lastly, the definitions of misappropriation between the two acts are similar, yet different. The MUTSA details a variety of ways in which “improper means” could be understood, where the DTSA is rather vague and open-ended. In terms of damages, the DTSA allows for recover of actual damages, restitution damages and allows for injunctions on threatened misappropriation, whereas the MUTSA has been silent on whether injunctive relief is appropriate where the harm is rudimentary.