

Mississippi

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

The statutory authority for trade secret protection in Mississippi is the Mississippi Uniform Trade Secrets Act (MUTSA), Miss. Code Ann. §§ 75-26-1 to -19.

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

Under MUTSA, plaintiffs must demonstrate: (1) a trade secret existed; (2) the trade secret was acquired through a breach of a confidential relationship or discovered by improper means; and (3) the use of the trade secret was without the plaintiff's authorization. *Union Nat'l Life Ins. Co. v. Tillman*, 143 F.Supp.2d 638, 643 (N.D. Miss. 2000) (citing *Body Support Sys., Inc. v. Blue Ridge Tables, Inc.*, 1997 WL 560920, at *6 (N.D. Miss. Aug. 12, 1997)).

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 MUTSA, the term "trade secret" is defined 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. Miss. Code Ann. § 75-26-3(d)(i)-(ii). There are few cases that address in detail the "particularity" or specificity with which plaintiff must identify its trade secrets at the pleading stage. For instance, a federal district court rejected defendant's argument that plaintiff had failed to plead the existence of a "specific" trade secret, holding that "a party is not required to plead the very secrets it is suing to protect and that plaintiff's allegation it had developed "unique and specific claims processing capabilities specific to the Mississippi Medicaid Management Information System" sufficient to plausibly state the existence of a trade secret under MUTSA. *Seven Seas Technologies, Inc. v. Infinite Computer Systems, Inc.*, 353 F.Supp.3d 545 (S.D. Miss. 2018); see also *Precision Spine, Inc. v. Zavation, LLC*, 2016 WL 866965, at *4 (S.D. Miss. Mar. 2, 2016) (finding allegation that information "concerning the design and manufacture of [the plaintiff's] products" constituted trade secret sufficient to state a claim).

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 reasonableness of the plaintiff's efforts to maintain the secrecy of the trade secret information at issue is examined on a case-by-case basis. In one widely-cited case, the Mississippi Supreme Court held that plaintiff's efforts to keep a pharmacy customer list secret were sufficient where the plaintiff limited access to a computer on which the list was stored by password, limited physical access of the list to employees in the pharmacy, and addressed protection of confidential information in its employee handbook and operations manual. *Fred's Stores of Miss., Inc. v. M & H Drugs, Inc.*, 725 So.2d 902, 908-11 (Miss. 1998). Similarly, in *Marshall v. Gipson Steel, Inc.*, 806 So.2d 266, 271-72 (Miss. 2002), the Mississippi Supreme Court upheld a lower court's finding that the plaintiff had adequately protected its putative trade secrets by ensuring that the information was never released and never left its controlled and monitored-access building, only a limited number of employees had access to the information via the company's computer system, and employees were made aware of the sensitive nature of the information.

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

Mississippi has not adopted the inevitable disclosure 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?

Courts often consider whether the putative trade secret was "readily ascertainable" in conjunction with the analysis of whether it was "generally known." Courts applying Mississippi law have recognized that information that is "so common [or] well-known . . . that it lacks all novelty, uniqueness and originality" as "readily ascertainable." *Cataphote Corp. v. Hudson*, 444 F.2d 1313, 1316 (5th Cir. 1971). In specific cases, courts have held that the process by which bids for steel fabrication were estimated was not a trade secret because the process was readily ascertainable by proper means through reverse engineering. *Marshall v. Gipson Steel, Inc.*, 806 So.2d 266, 271-72 (Miss. 2002). In another case, a court held that the identities of customers and pro forma sales invoices were not trade secrets because the identities of specific customers were readily ascertainable by proper means and the *pro forma* invoices were widely disseminated. *J.T. Shannon Lumber Co. v. Gilco Lumber, Inc.*, 2010 WL 234996 (N.D. Miss. 2010). On the other hand, specific customer preferences and requirements have been recognized under Mississippi law to constitute trade secrets where such information was not readily ascertainable to the public or specific competitors. *See Tom James Co. v. Hudgins*, 261 F.Supp.2d 636, 641 (S.D. Miss. 2003) (citing *Union Nat'l Life Ins. Co. v. Tillman*, 143 F.Supp.2d 638 (N.D. Miss. 2000)); *see also Fred's Stores, Inc. v. M & H Drugs, Inc.*, 725 So.2d 902 (Miss. 1998).

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

There are no recent "hot button" issues under Mississippi law regarding trade secrets.

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

Generally speaking, the elements required to establish a claim for misappropriation are the same under both the DTSA and the MUTSA. *See, e.g., Raju v. Medtronic, Inc.*, 2021 WL 1232101 (S.D. Miss. March 31, 2021). Other than observing that the DTSA requires a nexus with interstate commerce that MUTSA does not, no courts applying Mississippi law have analyzed in any detail any differences, even minor, between the statutes.