

Missouri

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

In Missouri the statutory authority for trade secret protection is the Missouri Uniform Trade Secrets Act, Mo. Rev. Stat. § 417.450, *et seq.*

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

“A claim for misappropriation of trade secrets under the MUTSA has three elements: (1) a trade secret exists, (2) the defendant misappropriated the trade secret, and (3) the plaintiff is entitled to either damages or injunctive relief.” *Cent. Tr. & Inv. Co. v. Signalpoint Asset Mgmt., LLC*, 422 S.W.3d 312, 320 (Mo. 2014).

Misappropriation of a trade secret, as defined in Mo. Rev. Stat. § 417.453(2), occurs when one of three scenarios occurs: “(1) when a person acquires the trade secret while knowing or having reason to know that he or she is doing so by improper means, (2) when a person who has acquired or derived knowledge of the trade secret discloses it without the owner’s consent, or (3) when a person who has acquired or derived knowledge of the trade secret uses it without the owner's consent.” *Cent. Tr. & Inv. Co.*, 422 S.W.3d at 320.

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 Missouri law, a trade secret is defined in Mo. Rev. Stat. § 417.453(4). “Evidence of purported ‘trade secrets’ must be more than general assertions, but must be sufficiently specific to allow a determination by the court.” *Sigma-Aldrich Corp. v. Vikin*, 451 S.W.3d 767, 774 (Mo. App. 2014) (a business strategy that borrowed heavily from a competitor and included publicly available information and had public-facing elements was not a trade secret). To be a trade secret in Missouri, the information must not be of public knowledge or widely known within the company itself or the industry in question at large. *Cont'l Research Corp. v. Scholz*, 595 S.W.2d 396, 400-01 (Mo. App. E.D. 1980). “The protection does not extend to knowledge that is the natural product of the employment or known throughout the industry . . .” *Victoria's Secret Stores v. May Dep't Stores Co.*, 157 S.W.3d 256, 262 (Mo. App. E.D. 2004). Information regarding customer lists, customer purchasing requirements, marketing and personal contacts, vendors, and similar information are not, without more, trade secrets or even confidential, where it may easily be obtained by others in the industry. *W. Forms, Inc. v. Pickell*, 308 F.3d 930, 934 (8th Cir. (Mo.) 2002), quoting *Metal Lubricants Co. v. Engineered Lubricants Co.*, 284 F.Supp. 483, 488 (E.D. Mo. 1968), *aff'd*, 411 F.2d 426, 428 (8th Cir. 1969) (noting the Missouri Supreme Court’s strict standards of proof for misappropriation of trade secret claims).

Missouri considers the following factors in determining whether a trade secret exists: “(1) the extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the

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value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.” *Healthcare Servs. of the Ozarks, Inc. v. Copeland*, 198 S.W.3d 604, 611 (Mo. 2006).

Although plaintiffs need not plead the trade secrets with particularity, plaintiffs should describe with particularity facts demonstrating the defendant’s access to trade secrets. *Outdoor Leisure Prods. v. Dansons, Inc.*, No. 3:17-05029-CV-RK, 2018 U.S. Dist. LEXIS 132463, at *5 (W.D. Mo. Aug. 7, 2018). The U.S. District Court for the Western District of Missouri will apply an “early disclosure” policy, meaning that alleged trade secrets should be described with particularity early in discovery in order to prevent fishing expeditions. *Id.*

General averments that a trade secret derives independent value from not being publicly known will be sufficient to preclude a motion to dismiss. *Roeslein & Assocs. v. Elgin*, No. 4:17 CV 1351 JMB, 2018 U.S. Dist. LEXIS 34000, at *28-29 (E.D. Mo. Mar. 2, 2018) (declining to take judicial notice of documents provided by defendants showing publicly available documents and websites that purport to show plaintiffs had publicly disclosed the alleged trade secret information).

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.)

Missouri requires a trade secret to be subject to efforts that are “reasonable under the circumstances to maintain its secrecy.” Mo. Rev. Stat. § 417.453. Missouri does not require absolute secrecy, only that reasonable measures were taken, with sufficient and consistent security precautions, to protect its trade secrets. In a classic case, *Carboline Co. v. Jarboe*, Carboline successfully argued that the information in their labs was secrets because lab notebooks were kept “under lock and key,” every employee in the lab was required to turn in their notebooks every evening, and employees were instructed to never, under any conditions, tell salesmen what made up their product or suppliers what the purchased products were used for. 454 S.W. 2d 540, 542 (Mo. 1970).

Modern techniques for protecting trade secrets include using passwords and password-protected software, utilizing non-disclosure agreements with employees and contractors, employing a security system, and locking facilities during non-business hours. *See Control Tech. & Sols., LLC v. Omni Energy Partners, LLC*, No. 4:21-cv-686-MTS, 2021 U.S. Dist. LEXIS 243084, at *20 (E.D. Mo. Dec. 21, 2021).

However, prior voluntary disclosure, along with other factors, may undermine an argument that secrecy has been preserved. *See Reddi-Wip v. Lemay Valve Co.*, 354 S.W.2d 913, 918 (Mo. App. 1962) (no claim for misappropriation of a trade secret where the parties had a prior confidential relationship and the alleged trade secrets were voluntarily disclosed in patents issued to plaintiffs).

Ultimately, the appropriateness of measures taken to protect confidentiality is an issue generally inappropriate for a motion to dismiss. *High Sch. Serviços Educacionais, Ltda, A Brazilian Co. v. Curators of the Univ. of Mo.*, No. 2:19-CV-04083-BCW, 2020 U.S. Dist. LEXIS 265268, at *10 (W.D. Mo. Nov. 6, 2020) (the existence of agreements to protect confidentiality of trade secrets was sufficient to preclude a motion to dismiss); *Roeslein & Assocs. v. Elgin*, No. 4:17 CV 1351 JMB, 2018 U.S. Dist. LEXIS 34000, at *24 (E.D. Mo. Mar. 2, 2018) (same).

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

Missouri has not formally adopted the inevitable disclosure doctrine. However, courts have “found the rationale underpinning the theory helpful in evaluating whether a former employee’s performance in his new role would ‘almost certainly require him to draw upon and use trade secrets and the confidential strategic planning to which he was privy.’” *Perficient Inc. v. Gupta*, No. 4:21CV759-HEA, 2021 U.S. Dist. LEXIS 124893, at *10 (E.D. Mo. July 6, 2021) (applying Missouri law) (quoting *Panera, LLC v. Nettles*, No. 4:16-cv-1181-JAR, 2016 U.S. Dist. LEXIS 101473, at *2 (E.D. Mo. Aug. 3, 2016)).

“[I]nvincibility alone is insufficient to justify injunctive relief” in Missouri. *H&R Block E. Tax Servs. v. Enchura*, 122 F. Supp. 2d 1067, 1075 (W.D. Mo. 2000). Courts instead require a demonstration of inevitability combined “with a finding that there is unwillingness to preserve confidentiality.” *Id.* (holding that the defendant’s knowledge of the trade secrets, and that such knowledge would benefit their new position, without more was insufficient to warrant injunctive relief).

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?

Missouri’s Uniform Trade Secrets Act requires that a trade secret “derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons.” Mo. Rev. Stat. § 417.453. The traditional rule is that where one honestly comes into possession of a trade secret and does not violate any contract or confidential relationship, there is no claim for misappropriation of trade secrets. See *Stuckes v. Nat’l Candy Co.*, 158 Mo. App. 342, 138 S.W. 352 (1911).

Disclosure to third parties, where the third parties sign confidentiality agreements, may defeat a claim that a trade secret is readily ascertainable. *Control Tech. & Sols., LLC v. Omni Energy Partners, LLC*, No. 4:21-cv-686-MTS, 2021 U.S. Dist. LEXIS 243084, at *20 (E.D. Mo. Dec. 21, 2021).

In one case, a counterclaim defendant asserted that alleged trade secrets were readily ascertainable, as they were largely comprised of a compilation of non-secret and trade secret information, and the counterclaim plaintiff could have recreated the compilation. *AvidAir Helicopter Supply, Inc. v. Rolls-Royce Corp.*, 663 F.3d 966, 972 (8th Cir. 2011). The Court disagreed, finding that the counterclaim defendant’s repeated failed attempts to access the information belied any claim that it was readily ascertainable. *Id.* at 973-74. The Court also noted that the existence of a trade secret depends more on the value of the secret itself, and not the merit of technical improvements contained therein. *Id.* at 972.

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

One hot button issue that courts in Missouri are addressing in regards to trade secrets claims is when a claim under MUTSA preempts another related claim. See *Control Tech. & Sols., LLC v. Omni Energy Partners, LLC*, No. 4:21-cv-686-MTS, 2021 U.S. Dist. LEXIS 243084 (E.D. Mo. Dec. 21, 2021). In *Control Tech & Sols*, the district court denied a motion to dismiss a tortious interference claim based on preemption by the MUTSA, because when deciding whether MUTSA preempts a claim, the court looks to see whether the claim is “no more than a restatement of the same operative facts” as the misappropriation of trade secrets claim. *Id.* (quoting *Secure Energy, Inc. v. Coal Synthetics, LLC*, No. 4:08-cv-1719-JCH, 2010 U.S. Dist. LEXIS 41088, 2010 WL 1691454, at *2 (E.D. Mo. Apr. 27, 2010)). There, the tortious interference claim alleged that defendants took credit for the plaintiff’s accomplishments, and that defendants made false statements about plaintiff’s business in order to prevent plaintiff from entering into contractual relationships with clients. These additional facts beyond those alleged under MUTSA precluded preemption.

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

The MUTSA and DTSA are extremely similar in nearly all aspects. They both provide a private cause of action for misappropriation of a trade secret. Mo. Rev. Stat. § 417.453; 18 U.S.C. § 1836(b)(1). Additionally, the elements of claims for misappropriation are essentially identical under both the DTSA and the MUTSA: “(1) a person acquires the trade secret while knowing or having reason to know that he or she is doing so by improper means; (2) a person who has acquired or derived knowledge of the trade secret discloses it without the owner’s consent; or (3) when a person who has acquired or derived knowledge of the trade secret uses it without the owner’s consent.” *Roeslein & Assocs. v. Elgin*, No. 4:17 CV 1351 JMB, 2018 U.S. Dist. LEXIS 34000, at *26 (E.D. Mo. Mar. 2, 2018) (denying DTSA claim and MUTSA because arguments of the DTSA and MUTSA claims were “similar if not identical”). One difference between the two statutes is that under the DTSA, a trade secret is required to “relate to a product or service used in or intended for use in, interstate or foreign commerce.” 18 U.S.C. § 1836(b)(1). No such requirement exists under the MUTSA.