

## Nevada

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Adam Knecht  
[aknecht@alversontaylor.com](mailto:aknecht@alversontaylor.com)

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

Kurt Bonds  
[kbonds@alversontaylor.com](mailto:kbonds@alversontaylor.com)

Chapter 600A of the Nevada Revised Statutes is Nevada's Uniform Trade Secrets Act (Nevada UTSA). The Nevada UTSA protects trade secret owners by establishing criminal penalties and civil remedies against the misappropriation of intellectual property. A "Trade secret" is : (a) Means information, including, without limitation, a formula, pattern, compilation, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction, or code that: (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other persons who can obtain commercial or economic value from its disclosure or use, and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. NRS 600A.030.

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

To establish a claim of trade secret misappropriation under Nevada UTSA, the plaintiff must demonstrate the following: (1) the existence of a valuable trade secret, (2) misappropriation of the trade secret through use, disclosure, or nondisclosure of use, and (3) that the misappropriation was wrongful as it was done in violation of an express or implied contract or by a party who had a duty not to disclose. *Frantz v. Johnson*, 116 Nev. 455, 466, 999 P.2d 351, 358 (2000).

"Misappropriation" means: (a) Acquisition of the trade secret of another by a person by improper means; (b) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or (c) Disclosure or use of a trade secret of another without express or implied consent by a person who: (1) Used improper means to acquire knowledge of the trade secret; (2) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was: (I) Derived from or through a person who had used improper means to acquire it; (II) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (3) Before a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake. NRS 600A.030.

The complainant may be awarded monetary damages for misappropriation. These damages may include losses caused by the misappropriation and any unjust enrichment that resulted from the misappropriation but were not considered when calculating the losses. As an alternative, damages caused by misappropriation may be determined by requiring the defendant to pay a reasonable royalty for their unauthorized disclosure or use of the trade

secret. NRS 600A.050.

Punitive damages can be awarded for willful, wanton, or reckless misappropriation or disregard of the trade secret owner's rights. The court may award exemplary damages that do not exceed twice the monetary award. The plaintiff must demonstrate malice to receive an award of punitive damages in an action for misappropriation. *Frantz*, 116 Nev. At 455, 471 (2000).

Injunctive relief is available with the actual or threatened misappropriation of a trade secret. *ARB Labs Inc. v. Woodard*, 2019 WL 332404, at \*2 (D. Nev. Jan. 25, 2019). An injunction must be terminated when the trade secret has ceased to exist, but the injunction may be continued for a reasonable additional time to eliminate commercial or other advantages that otherwise would be derived from the misappropriation. In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period for which use could have been prohibited. Exceptional circumstances include a material and prejudicial change of position before acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable. In appropriate circumstances, the court may take "affirmative acts to protect a trade secret." *Zitan Techs., LLC v. Liang Yu*, 2019 WL 95779, at \*5 (D. Nev. Jan. 3, 2019). "Affirmative acts" includes, without limitation, issuing an injunction or order requiring that a trade secret which has been misappropriated and posted, displayed or otherwise disseminated on the internet be removed from the internet immediately. NRS 600A.040.

**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 determination of whether information is a trade secret is generally a question of fact. *Frantz*, 116 Nev. at 455. In considering whether information is a trade secret, Nevada courts generally consider the extent to which the information is known outside of the business; the ease or difficulty with which others could properly acquire the information; whether the information was confidential or secret; how and to what extent the employer guarded the information's secrecy; and the former employee's knowledge of customers' buying habits and other customer data and whether the employer's competitors know this information. *Finkel v. Cashman Prof'l, Inc.*, 270 P.3d 1259, 1264 (Nev. 2012).

**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 owner of a trade secret is presumed to have taken reasonable measures to maintain its secrecy if the word "Confidential" or "Private" or any other indication of secrecy is prominently placed on any medium or container that describes or includes any part of the trade secret. This assumption can only be rebutted by clear and convincing evidence that the owner did not make reasonable efforts to maintain the secrecy of the trade secret. NRS 600A.032. Nevada courts found reasonable efforts to maintain the secrecy of information were found when pricing schemes were kept confidential, the point-of-sale software was not shared with anyone outside the business, and employees were required to keep business-related details confidential. The court noted that extreme measures had been taken to protect customer information as only four people had access to its contracts and customer data. *Finkel*, 270 P.3d at 1264 (2012).

Similarly, Nevada courts have also determined that reasonable efforts to maintain secrecy have been made when the plaintiff clearly labeled the disseminated information as "confidential," kept a secret formula marked and treated as confidential, required those who were disclosed the formula to keep it confidential, and included a confidentiality provision in a licensing agreement. *Saini v. Int'l Game Tech.*, 434 F. Supp. 2d 913, 924 (D. Nev. 2006); *Nav N Go Kft. v. Mio Tech. USA, Ltd.*, 2009 WL 10693414, at \*20 (D. Nev. June 11, 2009); *V'Guara Inc. v. Dec*, 925 F. Supp. 2d 1120, 1125 (D. Nev. 2013).

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

There are no reported Nevada state court opinions discussing the inevitable disclosure doctrine. California has specifically rejected the doctrine, and Nevada courts may follow California's precedent if the issue arises. Trade Secret Laws: California, Practical Law State Q&A 8-504-5513.

#### 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?

Broadly defined, a trade secret is information that “[d]erives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public.” *Finkel*, 128 Nev. At 68, 74(2012). To be readily ascertainable, the information asserted to be a trade secret must not be ascertained quickly or so self-revealing to be ascertainable at a glance. Furthermore, a trade secret is not readily ascertainable when the means of acquiring the information falls below the generally accepted standards of commercial morality and reasonable conduct, even if the means of obtaining the information violated no government standard, did not breach any confidential relation, and did not involve any fraudulent or illegal conduct. Even if the information asserted to be a trade secret could have been duplicated by other proper means, the information is not readily ascertainable if it was acquired by improper means. *MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev. 235, 236-37, 416 P.3d 249, 253 (2018).

Alternatively, at least one Nevada federal court has held that an idea or concept is not a trade secret if it is readily ascertainable by proper means by persons who can obtain commercial or economic value from its use. *Caesars World, Inc. v. Milanian*, 247 F. Supp. 2d 1171, 1203-04 (D. Nev. 2003).

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

The Nevada UTSA supersedes any conflicting tort, restitutionary, and other Nevada laws that provide civil remedies for trade secret misappropriation. NRS 600A.090(1). However, the Nevada UTSA does not affect civil remedies that are not related to trade secret misappropriation. NRS 600A.090(2). Still, these exceptions may be narrower than they seem, as the Nevada courts have held other civil remedies as precluded by the NUTSA. The US District Court for Nevada has held that the Nevada UTSA precluded a plaintiff’s claims for unjust enrichment and unfair competition because the claims were duplicative of the plaintiff’s claim for trade secret misappropriation. *Hutchison v. KFC Corp.*, 809 F. Supp. 68, 70-71 (D. Nev. 1992). The Supreme Court of Nevada clarified that NRS 600A.090 would typically preempt various causes of action if they arise from a single incident, such as the misappropriation of bidding and pricing information. *Frantz*, 116 Nev. at 455, 471. The court ruled that it was a mistake to grant damages for misappropriation of confidential information, breach of fiduciary duty, intentional interference with contractual relations, intentional interference with prospective advantage, breach of the covenant of good faith and fair dealing, civil conspiracy, and unjust enrichment. *Frantz*, 116 Nev. at 455, 471.

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

Nevada’s adopted version of the Uniform Trade Secrets Act includes a provision to protect misappropriated trade secrets when posted on the internet. The provision states that a misappropriated trade secret will not lose statutory protection if, within a reasonable time of discovering it, the owner obtains a court order requiring the posting to be removed and the information is removed from the internet within a

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reasonable amount of time after the court order is issued. NRS 600A.055. Some commentators have pointed out that this provision may be ineffective against third parties who learn of the trade secret without fault and have no reason to know that the information was a trade secret. Additionally, it is impossible to confirm if the information has been completely removed because it might have been disseminated on the internet.