

Ohio

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

In 1994, Ohio adopted the Uniform Trade Secrets Act (“OUTSA”), Ohio R.C. § 1333.61, et seq. The OUTSA provides for various remedies to protect trade secrets, including injunctive relief (R.C. 1333.62) exemplary damages for willful theft of trade secrets (R.C. 1333.63), and attorney’s fees (R.C. 1333.64).

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

A trade secret claim in Ohio has three elements. A plaintiff must show “by a preponderance of the evidence: (1) the existence of a trade secret, (2) the acquisition of a trade secret as a result of a confidential relationship, and (3) the unauthorized use of a trade secret.” *Tomaydo–Tomahhdo L.L.C. v. Vozary*, 82 N.E.3d 1180, 1184 (Ohio Ct. App. 2017), citing *Heartland Home Fin., Inc. v. Allied Home Mortg. Cap. Corp.*, 258 F. App’x 860, 861 (6th Cir. 2008).

The second element requires the plaintiff to establish the existence of some “agreement or understanding of confidentiality” as Ohio courts do not presume such confidentiality within the employer-employee relationship. *R & R Plastics, Inc. v. F.E. Myers Co.*, 92 Ohio App.3d 789, 802 (Ohio Ct. App. 1993). In *R & R Plastics*, the court found no such confidentiality because the employee worked in tandem with the employer in developing the specifications of the device at issue and the because the employer allowed visitors to tour the facility without first discussing the confidential nature of the device. *Id.*

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.)

In Ohio, a plaintiff is not permitted to make sweeping conclusory statements regarding their claim to establish trade secret status. The Supreme Court of Ohio held in *State ex rel. Besser v. Ohio State Univ.*, 732 N.E.2d 373, 378 (Ohio 2000) that conclusory statements are not sufficient for satisfying the burden of establishing trade secret status. “A claimant asserting trade secret status has the burden to identify and demonstrate that the material is included in categories of protected information under the statute.” *Arnos v. MedCorp., Inc.*, 2010 Ohio App. LEXIS 1555, (Ohio App. 6 Dist., 2010). *Arnos* further explains that “those asserting that the materials sought constitute trade secrets that are privileged from discovery bear the burden of establishing trade secret status.” *Id.* at *5-6; accord *Hance v. Cleveland Clinic*, 172 N.E.3d 478, 486 (Ohio Ct. App. 2021) (claimant explaining that “requested material is business information that derives independent economic value as it is not generally known” will not suffice in establishing trade secret status); *Besser*, 732 N.E.2d at 379 (conclusory affidavit statements are insufficient for establishing protected information); *In re Rev. of Alternative Energy Rider Contained in Tariffs of Ohio Edison Co.*, 106 N.E.3d 1, 9 (Ohio 2020) (party claiming protected status in a public records request failed to detail how they would be harmed by releasing the 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.)

To show the existence of a trade secret, a plaintiff in Ohio must show that the plaintiff, or employer, took reasonable efforts to maintain secrecy. While there are no specific requirements a plaintiff must undertake to meet this standard, Ohio courts review what steps a plaintiff took to keep the information private or physically restrict access to the information. See *Niemi v. NHK Spring Co.*, 543 F.3d 294, 299-300 (6th Cir. 2008). This may be: requiring employees and potential customers to sign confidentiality agreements, see *ALTA Analytics, Inc. v. Muuss*, 75 F. Supp. 2d 773, 785 (S.D. Ohio 1999); shredding sensitive paperwork and storing information in locked areas, see *Valco Cincinnati, Inc. v. N & D Machining Service, Inc.*, 492 N.E.2d 814, 819 (Ohio 1986); keeping information password protected, see *The Rightthing, LLC v. Brown*, No. 3:09-CV-135, 2009 U.S. Dist. LEXIS 7464, at *22-23 (N.D. Ohio Feb. 2, 2009); or, “as a matter of policy” prohibiting visitors to be unattended “beyond the front office,” see *Dayton Superior Corp. v. Yan*, No. 3:12-CV-380, 2013 U.S. Dist. LEXIS 559922, at *39-40 (S.D. Ohio Apr. 18, 2013).

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

Yes, Ohio applies the inevitable disclosure doctrine. *Proctor & Gamble Co. v. Stoneham*, 747 N.E.2d 268, 279 (Ohio Ct. App. 2002); *Berardi’s Fresh Roast, Inc. v. PMD Ents.*, 2008 LEXIS 4618 (Ohio Ct. App. Oct. 23, 2008).

According to the inevitable disclosure rule, “a threat of harm warranting injunctive relief can be shown by facts establishing that an employee with detailed and comprehensive knowledge of an employer’s trade secrets and confidential information has begun employment with a competitor of the former employer in a position that is substantially similar to the position held during the former employment.” *Proctor & Gamble*, 747 N.E.2d at 279; *Dexxon Dig. Storage, Inc. v. Haenszel*, 832 N.E.2d 62, 68 (Ohio Ct. App. 2005).

In *Proctor & Gamble*, the First District Ohio Court of Appeals held that the inevitable disclosure rule applies when “an employee possesses knowledge of an employer’s trade secrets and begins working in a position that causes him or her to compete directly with the former employer or the product line that the employee formerly supported.” *Id.* at 278. There may be a threat of harm sufficient to justify an injunction if a court finds that the employee would not be able to “compartmentalize and selectively suppress” the knowledge of the former employer. *Dexxon* 832 N.E.2d at 68. Some Ohio courts may limit the inevitable disclosure doctrine to cases where the former employee possesses “timely, sensitive strategic and/or technical, or both, information.” *Hydrofarm, Inc. v. Orendorff*, 905 N.E.2d 658, 663 (Ohio Ct. App. 2008).

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?

Ohio courts have generally addressed the “readily ascertainable” defense in cases regarding client lists. Under Ohio law, a trade secret must derive value from not being generally known to, and not being readily ascertainable by, proper means by other persons. Ohio Rev. Code § 1333.61(D). A client list with identities that are readily ascertainable may satisfy the definition of trade secrets if it contains additional information that is not readily ascertainable by the public. *State ex rel. Lucas Cty. Bd. of Commrs. v. Ohio Env’t Prot. Agency*, 724 N.E.2d 411, 419 (Ohio 2000) (holding that a landfill operator’s client list was a trade secret even though the client names were readily ascertainable because the list also contained information that would identify the amount of waste, time spent mixing, and comments by the operator); *State ex rel. Besser v. Ohio State Univ.*, 732 N.E.2d 373, 379 (Ohio 2000) (holding that one page of a business plan is a trade secret

when it contains names of doctors who produce the most revenue). Information that is not generally available to the public, and thus may constitute a trade secret, include: the name of the contact person, a phone number, an email, or other data known only because of the relationship with the client. *Salemi v. Cleveland Metroparks*, 49 N.E.3d 1296, 1302 (Ohio 2015); *Columbus Bookkeeping & Bus. Servs. v. Ohio State Bookkeeping, LLC*, 2011 Ohio App. LEXIS 5655, at *11 (Ohio Ct. App. Dec. 30, 2011).

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

Ohio courts have been exploring the extent to which a claim under the OUTSA preempts common law claims. Where a common law claim is no more than a restatement of the same operative facts that form the basis of the statutory trade secret claim, the common law claims are preempted. *See, e.g., Keller N. Am., Inc. v. Earl*, 2021 U.S. Dist. LEXIS 159201, at *10-11 (N.D. Ohio Aug. 24, 2021).

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

To state a claim under the DTSA, a plaintiff must allege “(1) the existence of a trade secret; (2) the acquisition of a trade secret as a result of a confidential relationship; and (3) the unauthorized use of a trade secret.” *Shepard & Assocs. v. Lokring Tech, LLC*, 2022 U.S. Dist. LEXIS 117268, at *12-13 (N.D. Ohio July 1, 2022). Courts have held that the elements of a claim under the DTSA are the same as those under the OUTSA. *Id.* at *13, n. 3; *Keller*, 2021 U.S. Dist. LEXIS 159201, at *21, n.3.