

Tennessee

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

The statutory authority for trade secret protection in Tennessee is the Tennessee Uniform Trade Secrets Act (TUTSA), Tenn. Code Ann. §§ 47-25-1701 to -09 (2000).

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

Generally, there are three elements necessary to prove misappropriation of a trade secret: "(1) the existence of a trade secret; (2) misappropriation of the trade secret by the defendant; and (3) resulting detriment to the plaintiff." *Partylite Gifts, Inc. v. Swiss Colony Occasions*, 2006 WL 2370338 (E.D. Tenn. Aug. 15, 2006). Liability for trade secret misappropriation is governed by Tenn. Code Ann. §47 25 1702(2), which outlines the various acts that constitute "misappropriation." TUTSA's definition of trade secret "is sufficiently broad to include information which at common law would have been considered confidential information." *Knox Trailers, Inc. v. Maples*, --F. Supp. 3d--, 2022 WL 248093, at *6 (E.D. Tenn. Jan. 25, 2022).

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 Act defines a "trade secret" as any "technical, nontechnical, or financial data, a formula, pattern, compilation, program, device, method, technique, process, or plan" that: (1) derives independent economic value from not being generally known; and (2) would provide economic value to others from its disclosure. In addition, the information must be (3) subject to "reasonable" efforts to maintain its secrecy. Tenn. Code Ann. §47 25 1702(4). While "absolute secrecy is not required, there must be a substantial element of secrecy." *Hickory Specialties v. B & L Labs, Inc.*, 592 S.W.2d 583 (Tenn. Ct. App. 1979). To "constitute a trade secret, it must be difficult for anyone outside the confidential relationship to acquire the information by proper means." *Wright Med. Tech., Inc. v. Grisoni*, 135 S.W.3d 561 (Tenn. Ct. App. 2001). "Several factors are relevant to determining whether information falls within this statutory definition, including the extent of public knowledge; measures taken to guard its secrecy; the value of the information both to the business and to its competitors; money that was spent to develop the information; and the ease or difficulty with which it could be acquired by outsiders." *ProductiveMD, LLC v. 4UMD, LLC*, 821 F. Supp. 2d 955, 961 (M.D. Tenn. 2011) (quoting *Partylite Gifts, Inc. v. Swiss Colony Occasions*, 246 F. App'x 969, 973 (6th Cir. 2007)); see also *Wright Med. Tech., Inc. v. Grisoni*, 135 S.W.3d 561, 588 (Tenn. Ct. App. 2001).

Trade secret protection is not limited to just "technical" information, and

the statute expressly extends coverage to “nontechnical,” “financial data” and confidential business information as well. *See, e.g., Int’l Security Mgmt. Group, Inc. v. Sawyer, et al*, 2006 WL 1638537 (M.D. Tenn. Jun. 6, 2006) (pricing information); *see also Cam Int’l L.P. v. Turner*, 1992 WL 74567 (Tenn. Ct. App. Apr. 15, 1992) (“[I]nformation concerning customers’ specialized requirements, need and product preferences” may be entitled to protection) (decision prior to enactment of TUTSA). Even information that, considered in isolation, is in the public domain can be protectable to the extent that it is combined with other non-public information to form a trade secret. *Wright Med. Tech., Inc. v. Grisoni*, 135 S.W.3d 561 (Tenn. Ct. App. 2001) (if portions of information are publicly known, the integration of those portions into a unitary whole may still be protectable). As one commentator has put it, “[t]he fact that some or all of the components of the trade secret are well known does not preclude protection for a secret combination, compilation, or integration of the individual elements.”

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 Tennessee Uniform Trade Secret Act requires that trade secret owners use reasonable means to maintain secrecy of their trade secrets (Tenn. Code Ann. § 47-25-1702(4)(B)). It is well-settled that absolute secrecy is not required and, instead, a plaintiff need only show that efforts reasonable under the particular circumstances or facts of the case were taken. *See also Hickory Specialties v. B & L Labs, Inc.*, 592 S.W.2d 583 (Tenn. Ct. App. 1979) (Tennessee common law). A plaintiff is likewise not required to detail, at the initial pleading stage, the specific efforts it undertook to ensure secrecy of the alleged trade secrets. *See ProductiveMD, LLC v. 4UMD, LLC*, 821 F. Supp.2d 955, 962 (M.D. Tenn. 2011).

The Tennessee cases make clear that the inquiry into the “reasonableness” of the measures utilized to protect a purported trade secret is very fact-specific. Courts have held that the mere existence of a nondisclosure agreement with the defendant is not sufficient, by itself, to demonstrate that the measures taken by plaintiff to preserve secrecy were “reasonable,” particularly in the absence of a showing that other employees with access to the alleged trade secrets were not subject to such an agreement or that other measures were in place to protect the information. *See Vincit Enters., Inc. v. Zimmerman*, 2006 WL 1319515, at *6 (E.D. Tenn. May 12, 2006). Dismissal is appropriate where, on the face of the pleadings, it is clear that no reasonable measures were taken to safeguard the subject information. *BNA Associates, LLC v. Goldman Sachs Specialty Lending Group, LP*, --F.Supp.3d--, 2022 WL 1449707 (M.D. Tenn. May 9, 2022) (granting defendant’s motion to dismiss on grounds that confidentiality agreement between parties, by its terms, did not prohibit the disclosure of the subject price information).

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

Tennessee has not expressly adopted the inevitable disclosure doctrine. However, TUTSA allows an injunction for “threatened” misappropriation (Tenn. Code Ann. § 47-25-1703). At least one federal court applying Tennessee law, granted an injunction based on threatened misappropriation where an employee with knowledge of information about a specialized furnace left to work for a direct competitor. *Carborundum Co. v. Williams*, 468 F. Supp. 38 (E.D. Tenn. 1978). In *Carborundum Co.*, the court did not enjoin the employee from working for the competitor, but precluded him from disclosing any information he gained from his previous employer.

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?

While few reported Tennessee cases contain detailed analyses of whether the subject information was “readily ascertainable” and thus not subject to protection as a trade secret, it is clearly a defense to

misappropriation on the proper facts. For instance, Tennessee courts have held that information that is “demonstrated in front of a public audience” is either general knowledge within the industry or “readily ascertainable within the meaning of TUTSA. *Hinson v. O'Rourke*, 2015 WL 5033908, at *5 (Tenn. Ct. App. Aug. 25, 2015).

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 Tennessee 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?

The elements of a DTSA claim are “largely the same” as the elements of a TUTSA claim. *Enchant Christmas Light Maze & Mkt. Ltd. v. Glowco, LLC*, 2019 WL 5964531, at *5 (M.D. Tenn. Nov. 13, 2019). See also *ASC Engineered Solutions, LLC v. Island Industries, Inc.*, 2021 WL 2583555 (W.D. Tenn., June 23, 2021) (conducting a single analysis of plaintiff’s motion for summary judgment under both statutes given the similarity of the elements necessary to show misappropriation).