

Arkansas Case Law Informs the Definition of "Trade Secret"



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02/27/2024

Case law informs the definition of "trade secret" which assists us as we prospectively counsel clients and litigate trade secret cases. In addition to the statutory [definitions of "Trade Secret"](#) that control what's included there is, of course, also a growing body of case law that further sets the metes and bounds of what is and is not a trade secret. By relying on the case law and drawing on past examples, we provide clearer advise for clients. When we are assisting clients with both prosecuting and defending trade secret claims, we not only rely on the statutes that we have covered in previous blog posts, but we also carefully study the existing case law. By looking at how courts have handled trade secret claims in the past, we can often make the best and most persuasive case for our clients. When drafting agreements for clients on the front end, we also advise clients to take strategic and preventative steps based in large part on the existing body of case law. This article examines some of that case law that we draw upon.

When seeking to determine whether specific information should be classified as protectable trade secrets, Arkansas courts examine the following criteria:

- The extent to which the information is known outside the business.
- The extent to which the information is known by employees and others involved in the business.
- The measures the company takes to guard the secrecy of the information.
- The information's value to the company and its competitors.
- The amount of effort and money the company expended to develop the information.
- The ease or difficulty with which the information could be properly acquired or duplicated by others.

Freeman v. Brown Hiller, 281 S.W.3d 749, 756 (Ark. 2008); *ConAgra, Inc. v. Tyson Foods, Inc.*, 30 S.W.3d 725, 729 (Ark. 2000).

There is case law in Arkansas holding that under the facts and circumstances of a specific case, the following were protectable trade secrets:

- Business information, including future plans, computer programs, and marketing programs.
- Configurations, including a wash water system for processing alumina residue, and certain production machines.
- Customer lists, including the following information about customers: credit histories, buying habits, and pricing agreements.

There is case law in Arkansas holding that under the facts and circumstances of a specific case, the following were **not** protectable trade secrets:

- Readily ascertainable information such as information that can be reverse engineered or gathered through simple observation.
- General industry skills and knowledge.

- Pricing information such as product pricing, pricing programs, costs of goods sold, profit margin, and marketing strategies (when the employer makes no reasonable effort to maintain confidentiality).
- A business plan that relied upon statistics from public studies and surveys.
- A handbook that included a marketing plans.
- A list of customer phone numbers.

While the question of what is a protectable trade secret is generally a fact-specific inquiry made on a case-by-case basis, there is case law in Arkansas holding that the following were **not** protectable trade secrets **as a matter of law**:

- Vendor lists available on the internet.
- Marketing plans (when the employer makes no reasonable effort to maintain confidentiality).
- Computer software (when the employer makes no reasonable effort to maintain confidentiality).

We cannot emphasize enough that making the decision about whether something constitutes protectable trade secrets very much depends on the facts and circumstances of each case. We work with clients across many different industries to protect their trade secrets, and to engage in litigation when necessary to enforce these rights. We have seen a rise in the amount of trade secret litigation in Arkansas, and we have been assisting more clients than ever before both in protecting their trade secrets, and in responding to claims by someone else that a business is misappropriating another's trade secrets.