

What Can a Court Do When Someone Violates the Secrecy of Trade Secrets?



Devin Bates

dbates@mwlaw.com

(501) 688.8864

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When someone violates the secrecy of a company's trade secrets, what can the company do about it?

Writing a sternly worded cease and desist letter is often a good first step that we recommend to clients, however it must be done in a way that properly sets the table for court intervention, while not broadcasting too much about litigation strategy. But when it comes time to actually take the violator to court, Arkansas law provides some guidance about what a court may do to intervene.

Courts in Arkansas maintain the secrecy of trade secrets by doing the following after one party sues another:

- **Entering an Order that Prevents Someone from Disclosing Trade Secrets.** An order from a court compelling a party to not do something is a very specific and very powerful remedy. We have often sought and obtained such relief for clients at the outset, asking a court to intervene immediately to protect trade secrets. This is a powerful remedy not only because of what it prevents someone from doing, but because an order from the court comes with significant consequences if a party does not comply.
- **Entering a Protective Order to Cloak Discovery in Protection.** Once a court case is filed, discovery usually ensues. Discovery can be quite intrusive, seeking to compel the disclosure of a host of confidential business information. By seeking a protective order, we usually can ensure that when such information is turned over, it can be used only for a limited purpose.
- **Holding In-Camera Hearings.** To the extent that secret information must be discussed in court, we can ask that Arkansas courts only hear presentations about trade secrets in the private setting of the judge's chambers, as opposed to in open court where the information may become matters of public record and/or available on the internet.
- **Sealing the Record.** We are able to ask that the court seal the record, meaning that the record and documents generated in a case are available only to parties and not to the public in general.

No two cases are exactly alike, and we often find ourselves working with clients to advise them of the best thing to ask for under the unique circumstances of their individual cases. We work with businesses across many different industries to protect their trade secrets before someone takes them. At the planning stage, drawing from our experience in unfair competition litigation we advise clients about the risks and rewards of litigation. Oftentimes, by getting solid advice on the front end we are able to substantially limit the risk that a trade secret claim will later be necessary in court. But by planning accordingly, we are also able to advise clients to set up their trade secrets in a way that best positions them for protectability should a court case later become necessary.