

How Can I Defend Myself Against a Claim of Misappropriation of Trade Secrets?



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How can you defend yourself if you are accused of misappropriation of trade secrets? This is a complex area of the law and there is no one-size-fits-all defense. Developing a strategy to successfully defend against a claim that you have allegedly violated trade secret laws involves careful inquiry into the facts and circumstances of each case, and involves understanding the unique goals of each client's situation.

This is a frequently faced situation, and one that we have encountered multiple times. Based on our experience in this area, we have prepared some initial considerations. In this blog post, we have outlined some of the defenses that we commonly see applied in trade secret claims.

- **The information is not a trade secret.** Just because someone makes the claim that information is a protectable trade secret does not mean that a court would actually award the information such protection. To better understand what is and is not a trade secret, we look closely at the [controlling statutes](#) and the [governing case law](#).
- **The information is readily accessible by proper means.** The Arkansas Uniform Trade Secrets Act specifically allows for this defense. Ark. Code Ann. § 4-75-601(4)(A).
- **There is no independent actual or potential economic value from maintaining secrecy.** Because the Arkansas Uniform Trade Secrets Act's "use" prong requires the use of the trade secret to be for competitive reasons, it allows for the assertion of the defense that the information has no independent actual or potential economic value from maintaining secrecy. Ark. Code Ann. § 4-75-601(4)(A).
- **Statute of limitation.** See our prior installment of this blog series on the [statute of limitations](#). In effect, that means that if someone waits too long to bring a claim, the claim will be time barred.
- **There was no misappropriation.** Showing that there was "misappropriation" of a trade secret is a specific undertaking that must meet the criteria outlined in a prior installment of this [blog series](#).
- **Equitable Defenses.** There are a host of equitable defenses that may possibly align with the facts and circumstances of a particular client. The ones that we frequently consider, and sometimes apply when applicable, include the defenses of estoppel, waiver, laches, and unclean hands.

We frequently find ourselves bringing someone to court when they have misappropriated our client's trade secrets, but we also come to the defense of businesses that have been wrongfully accused of a violation. Having worked on both sides of unfair competition litigation, we have a broad experience working with our clients to meet the needs and goals of each individual situation.