

What is Not a Trade Secret Under Federal Law?



Devin Bates
dbates@mwlaw.com
(501) 688.8864

10/16/2024

If the secrecy of certain confidential information is compromised, it may lose its status as a trade secret. Courts will not recognize information as a trade secret if it has become generally available, is commonly used within an industry, or has become outdated.

While the facts and circumstances of each situation will control a particular case, the law provides some guidance about situations that can lead to information not being considered a trade secret. Such situations include:

- **Generally Available Information:** Information that is publicly available or can be easily discovered or reverse-engineered does not qualify as a trade secret. For example, if a product can be disassembled and its components or processes easily duplicated, the information it contains is not protected as a trade secret. Notably, the Defend Trade Secrets Act (DTSA) categorically excludes reverse engineering from the definition of misappropriation by “improper means.”
- **Industry Commonality:** Information that is widely used in an industry is generally not considered a trade secret unless it is uniquely compiled or presented. It’s important for companies to assess what is already common practice within their industry to determine the potential for trade secret protection.
- **Outdated Information:** Information that has lost its value due to changes in the market or technological advancements is not considered a trade secret. For instance, older methods or processes that are no longer valuable in a current business context cannot be considered trade secrets. This is particularly relevant in fast-evolving industries where technological advancements can quickly render certain information obsolete.

Protecting trade secrets is essential for maintaining a competitive edge in many businesses.

Understanding what qualifies as a trade secret under federal law and the UTSA can help businesses take the necessary steps to protect their valuable information. In the next installment of this series, we will explore practical steps businesses can take to identify their trade secrets and strategies for maintaining their confidentiality.

This content was prepared for publication with the assistance of ChatGPT.