



Maryland

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

Maryland has adopted the Maryland Uniform Trade Secrets Act (Md. Com. Law §§ 11-1201–11-1209) (2011)), often referred to as MUTSA to distinguish it from the model Uniform Trade Secrets Act (UTSA).

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

To prevail on a misappropriation claim under the MUTSA, a plaintiff must establish:

- (1) it possessed a valid trade secret,
- (2) the defendant acquired its trade secret, and
- (3) the defendant knew or should have known that the trade secret was acquired by improper means.

(*DeSimone v. VSL Pharmaceuticals, Inc.*, 133 F. Supp. 3d 776 (D. Md. 2015)).

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 MUTSA defines trade secret as:

“[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(Md. Code Ann., Comm. Law, §11-1201(e)).

Even though MUTSA preempts the common law definition of a trade secret, Maryland courts often use the six factors listed in comment b, Section 757 of the Restatement of Torts (First) as guidance to determine whether information qualifies as a trade secret. Courts examine the:

- a. Extent that the information is known outside the business.
- b. Extent that it is known by employees and others involved in the business.

McNees Wallace & Nurick, LLC
100 Pine Street
Harrisburg, PA 17101
www.McNeesLaw.com

Kandice K. Hull, Esq.
khull@mcneeslaw.com

Kelly E. Lynch, Esq.
klynch@mcneeslaw.com

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- c. Extent of measures taken by the business to guard the secrecy of information.
- d. Value of the information to the business and its competitors.
- e. Amount of effort or money spent by the business in developing information.
- f. Ease or difficulty with which the information could be properly acquired or duplicated by others.

(*Home Paramount Pest Control Cos. v. FMC Corp./Agric. Prods. Grp.*, 107 F. Supp. 2d 684 (D. Md. 2000)).

To be protected as a trade secret, Maryland courts require that:

- a. The information be secret.
- b. The information's value derives from the secrecy.
- c. The owner uses reasonable efforts to safeguard the confidentiality of the information.

(*Montgomery Cnty. Ass'n of Realtors, Inc. v. Realty Photo Master Corp.*, 878 F. Supp. 804 (D. Md. 1995)).

The Maryland Court of Special Appeals has emphasized two requirements to determine whether information is a trade secret. The information must:

- a. Have economic value because it is not generally known or readily ascertainable by competitors who could use or disclose the information.
- b. Be the subject of reasonable efforts to keep the information secret.

(*Optic Graphics, Inc. v. Agee*, 591 A.2d 578 (Md. Ct. Spec. App. 1991)).

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.)

To qualify as a trade secret, the Maryland Uniform Trade Secrets Act requires reasonable efforts to keep information secret. Md. Code Ann., Comm. Law, §11-1201(e)(2). However, there are no statutes or regulations explaining what are reasonable steps to maintain trade secret secrecy.

Examples of reasonable efforts in case law to maintain the secrecy of a trade secret can include:

- A. Marking documents containing information as secret and keeping the information in a locked drawer (*Tabs Assocs., Inc. v. Brohawn*, 475 A.2d 1203 (Md. Ct. Spec. App. 1984)).
- B. Licensing the trade secret information to a limited number of licensees (*Trandes Corp. v. Guy F. Atkinson Co.*, 996 F.2d 655 (4th Cir. 1993)).
- C. Obtaining agreements from licensees that they will not copy or transfer the information to others (*Trandes Corp.*, at 664).
- D. Ensuring employees would not disclose the information (*Trandes Corp.*, at 664).
- E. Using passwords to restrict access to the information (*Trandes Corp.*, at 664).

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

Maryland does not recognize the doctrine of inevitable disclosure (*LeJeune v. Coin Acceptors, Inc.*, 849 A.2d 451 (Md. 2004)).

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?

Maryland law defines a “trade secret” as information that is not “readily ascertainable” by proper means.

(Md. Code Ann., Comm. Law, §11-1201(e)(1)).

The United States District Court for the District of Maryland found documents failed to meet the statutory definition of a trade secret because the documents contained an employer’s financial information, recruitment information, employee information (including personal and salary information) and company contacts that were readily ascertainable and had no continuing economic value.

(*Quality Sys., Inc. v. Warman*, 132 F. Supp. 2d 349 (D. Md. 2001)).

7. What are the most recent “hot button” issues addressed by courts in your state regarding trade secret claims?

The Fourth Circuit, interpreting the MUTSA, recently determined in *Airfacts, Inc. v. Amezaga*, No. 20-2344, 2022 U.S. App. LEXIS 9304 (4th Cir. Apr. 6, 2022), that a plaintiff is not required to show that a defendant put a trade secret to commercial use.

This decision is an important clarification for Maryland litigators that commercial use is not a threshold requirement to recover damages under the MUTSA.

8. How does your state’s Trade Secret law differ from the DTSA, as the latter is applied in your Circuit?

The DTSA and the MUTSA define a trade secret in substantially the same manner.

The DTSA provides that a trade secret can be misappropriated when a person either (1) acquires a trade secret while knowing, or having reason to know, that the trade secret was acquired by improper means, 18 U.S.C. § 1839(5)(A), or (2) uses or discloses the trade secret after acquiring it through improper means, *id.* § 1839(5)(B)(i). Maryland defines misappropriation in “substantially the same manner.” *Md. Physician’s Edge, LLC v. Behram*, No. DKC-17-2756, 2019 WL 4573417, at *5 (D. Md. Sept. 20, 2019). Compare Md. Code Ann., Com. Law § 11-1201(c) with 18 U.S.C. § 1839(5). Thus, a claim for misappropriation lies “simply by demonstrating that the defendant acquired [the] trade secret by improper means, even if the plaintiff cannot show use of that trade secret.” *Sys. 4, Inc. v. Landis & Gyr, Inc.*, 8 F. App’x 196, 200 (4th Cir. 2001) (interpreting the MUTSA).

The DTSA further provides that the “improper means” of acquiring a trade secret “includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.” 18 U.S.C. § 1839(6)(A). The MUTSA’s definition mirrors the DTSA’s definition. Compare *id.* with Md. Code Ann., Com. Law § 11-1201(b).

See *Brightview Group, LP v. Teeters*, 441 F.Supp.3d 115, 133-134 (D. Md. 2020).

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The primary difference between the MUTSA and the DTSA is that the DTSA only allows for a private cause of action where the alleged trade secrets are “related to a product or service used in, or intended for use in, interstate or foreign commerce.” 18 U.S.C. § 1836(b)(1).

Philips N. Am. LLC v. Hayes, No. CV ELH-20-1409, 2020 WL 5407796, at *8 (D. Md. Sept. 9, 2020).