



2023 Mid-Year Review: Key Trade Secret Developments

WHITE PAPER | By Kelsey I. Nix

A trade secret is any information used in one's business that derives independent economic value from not being generally known. Trade secrets, unlike patents, are protected indefinitely for as long as they remain a secret. Due in large part to enactment of the Defend Trade Secrets Act in May 2016 which made trade secret misappropriation a federal cause of action, trade secrets have become an increasingly attractive form of intellectual property for businesses to protect their innovations.

This White Paper summarizes and explains recent noteworthy decisions in trade secret law. Each of these decisions has meaningful implications for trade secret owners, defendants and practitioners alike.

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DISTRICT COURT SETS ASIDE \$64 MILLION JURY VERDICT BECAUSE TRADE SECRETS WERE INDEFINITE OR NOT “SECRET”

***Coda Dev. s.r.o. v. Goodyear Tire & Rubber Co.*, No. 15-cv-1572 (N.D. Ohio Mar. 31, 2023)**

A Czech inventor and his company, Coda Development, demonstrated self-inflating tire prototypes and disclosed testing results to Goodyear at preliminary meetings in 2009 subject to a non-disclosure agreement.¹ After discovering that Goodyear had applied for a self-inflating tire patent shortly after their meeting, Coda sued Goodyear for misappropriation of trade secrets and correction of inventorship of Goodyear’s patent in 2015.² The district court dismissed the trade secret claim as time-barred, but the Federal Circuit overturned the dismissal in 2019 and remanded to permit Coda to file an amended complaint.³ A series of pre-trial disputes followed, centering on the indefiniteness of trade secrets that Coda allegedly orally communicated to Goodyear and the risk that Coda would “mold[]” their claims by way of subsequent supplementation of their original recollection of those two 2009 conversations.⁴ The court, accordingly, ordered Coda to provide “closed-ended” interrogatory responses of the meetings (i.e., without the possibility of later supplementation).⁵ The case proceeded to jury trial on 17 trade secrets in September 2022.⁶

At the close of testimony, Judge Lioi granted judgment as a matter of law (“JMOL”) that five of the trade secrets were indefinite and would not be considered by the jury.⁷ The jury returned a verdict for Coda, finding that seven of the twelve alleged trade secrets qualified as trade secrets and that Goodyear had misappropriated five of those seven trade secrets, and awarded Coda \$2.8 million in compensatory damages and \$61.2 million in punitive damages.⁸ The court then granted Goodyear’s renewed JMOL motion invalidating the five “misappropriated” trade secrets and setting aside the jury verdict.⁹ The court concluded that four of the trade secrets were too indefinite.¹⁰ For example, inconsistent expert testimony resulted in ambiguous language: “[T]he testimony showed that the language of the trade secret was susceptible to *too many* interpretations . . . and shed no light on *which*

¹ *Coda Dev., s.r.o. v. Goodyear Tire & Rubber Co.*, 916 F.3d 1350, 1353–54 (Fed. Cir. 2019).

² *Id.*

³ *Id.* at 1361–62.

⁴ *Coda Dev., s.r.o. v. Goodyear Tire & Rubber Co.*, No. 15-cv-1572, slip op. at 3 (N.D. Ohio Mar. 31, 2023), Dkt. No. 393 (order granting defendants’ renewed Rule 50 motion)

⁵ *Id.* at 3.

⁶ *Id.* at 8.

⁷ *Id.* at 8–9.

⁸ *Id.* at 9.

⁹ *Id.* at 29–30.

¹⁰ *Id.* at 14–25.

interpretation might be the one Coda claimed as secret.”¹¹ Another was described only in “vague, functional terms (*i.e.*, an interface ‘that can’ accomplish certain ends).”¹² Two more articulated “no more than an undifferentiated list of components, which . . . cannot meet the definiteness requirement.”¹³ The court explained that “a trade-secrets plaintiff must “defin[e] the information for which protection is sought with sufficient definiteness to permit a court to apply the [statutory] criteria for protection . . . and to determine the fact of an appropriation.””¹⁴

The court also set aside the verdict on the fifth trade secret because it was not “secret.”¹⁵ This claimed trade secret was knowledge that Coda’s prototypes had produced certain air pressures in varying configurations; for example, that a Coda pump placed in a tire tread could generate 6.5 atmospheres of pressure.¹⁶ But simply knowing that Coda had succeeded in solving a problem was not a secret. This claimed trade secret was “merely a bald declaration that Coda developed such a tire that is ‘functional’” and “reveals no secret at all.”¹⁷

COURT DENIED TRO AGAINST EX-EMPLOYEES FOR TAKING CUSTOMER LISTS

***Dental Health Services v. Miller*, No. 23-cv-00383 (W.D. Wash. Apr. 6, 2023)**

Longtime employees Miller and Nace left Dental Health Services (DHS), a health care service plan provider, and began working for DHS’s competitors.¹⁸ DHS sued both individuals and fifty unidentified “Doe” defendants under the DTSA and Washington trade secret law.¹⁹ DHS sought a temporary restraining order (TRO) to enjoin Nace and the Doe defendants from using DHS’s confidential and trade secret information.²⁰ Plaintiffs also sought expedited discovery from Nace and Miller.²¹

The court considered the likelihood of DHS’s success on the merits.²² The inquiry focused on whether the customer identities allegedly taken by the defendants qualify as trade secrets.²³ DHS defined its trade secrets as “customer lists, customer

¹¹ *Id.* at 17.

¹² *Id.* at 18.

¹³ *Id.* at 20.

¹⁴ *Id.* at 11–12 (internal citation omitted).

¹⁵ *Id.* at 26–27.

¹⁶ *Id.* at 25.

¹⁷ *Id.* at 27.

¹⁸ *Dental Health Servs. v. Miller*, No. 23-cv-00383, slip op. at 2–3 (W.D. Wash. Apr. 6, 2023), Dkt. No. 37 (order denying motion for a temporary restraining order and for expedited discovery).

¹⁹ *Id.* at 4.

²⁰ *Id.* at 1.

²¹ *Id.* at 2.

²² *Id.* at 12.

²³ *Id.* at 10.

contact information, pricing, bid strategies, and insurance product plans.”²⁴ However, those are only “vague and general categories of information” that did not identify specific trade secrets.²⁵ The court also considered two specific elements allegedly taken by the defendants: (1) knowledge that the City of Seattle and a California trade union were DHS clients, and (2) knowledge of specific requirements imposed on DHS by regulators.²⁶ However, because these customer identities and regulatory orders were available in the public domain, they could not constitute trade secrets.²⁷ The court concluded that “DHS’s failure to provide sufficient details regarding its alleged trade secrets and confidential information dooms its motion for a TRO.”²⁸

The court also denied DHS’s motion for expedited discovery, finding that DHS failed to show that disclosure of confidential information would lead to irreparable harm, giving little weight to a contractual provision that purported to stipulate that “disclosure of Confidential Information would cause irreparable harm.”²⁹ The threat of irreparable harm had also been mitigated when the plaintiffs “addressed and improved” the problems that had prompted regulatory action, thus “diffusing the sting” of any disclosure of DHS’s past troubles by Nace.³⁰

FOURTH CIRCUIT FINDS A CONDITIONAL COVENANT-NOT-TO-SUE INSUFFICIENT TO MOOT A DECLARATORY JUDGMENT ACTION

***Synopsys, Inc. v. Risk Based Security, Inc.*, 70 F.4th 759 (4th Cir. 2023)**

Risk Based Security (“RBS”) is a security company that curates and licenses VulnDB, a database of open-source software vulnerabilities.³¹ One VulnDB licensee, Black Duck Software, was acquired by a RBS competitor, Synopsys.³² Believing Black Duck and Synopsys to have misappropriated portions of VulnDB, RBS sued in Massachusetts state court.³³ In 2021, Synopsys became authorized to designate and publicly report software vulnerabilities through the federally sponsored Common Vulnerabilities and Exposures (CVE) program.³⁴

RBS sent Synopsys a cease-and-desist letter, demanding that Synopsys refrain from designating software vulnerabilities to the CVE until their pending VulnDB

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 10–11.

²⁷ *Id.*

²⁸ *Id.* at 7.

²⁹ *Id.* at 13.

³⁰ *Id.* at 14.

³¹ *Synopsys, Inc. v. Risk Based Sec., Inc.*, 70 F.4th 759, 762 (4th Cir. 2023).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

litigation was resolved.³⁵ Synopsys responded with a declaratory judgment action in the Eastern District of Virginia, seeking a declaration that Synopsys did not misappropriate RBS's trade secrets.³⁶ Perhaps preferring to resolve the misappropriation issue in a forum of its choosing, RBS withdrew its cease-and-desist letter and sent Synopsys a covenant not to sue. However, the covenant and withdrawal were conditioned upon Synopsys's future work being "the product of its independent research and not based on any vulnerability database."³⁷ RBS then moved to dismiss the declaratory judgment action as moot. The district court denied the motion, explaining that "RBS has not demonstrated that the covenant remedies or prevents the injuries Synopsys alleges."³⁸

After resolving dueling *Daubert* motions and excluding one RBS expert's testimony on the economic value of RBS's asserted trade secrets, the district court granted summary judgment to Synopsys. On appeal, the Fourth Circuit reexamined the district court's holdings that the case was not moot, excluding RBS's expert and granting summary judgment.

On the mootness issue, the Fourth Circuit applied the standard from *Already, LLC v. Nike*³⁹ by inquiring whether it was "absolutely clear" that the injury Synopsys sought to prevent by its declaratory judgment action "could not reasonably be expected to recur."⁴⁰ The court agreed that the case was not moot, giving three reasons. First, "the covenant not to sue and withdrawal letter only partially addressed the entire dispute."⁴¹ Second, the covenant and withdrawal were "conditioned on Synopsys's future performance," leaving it less than "absolutely clear" that "RBS's allegedly wrongful behavior could not reasonably be expected to recur."⁴² Finally, the covenant and withdrawal "were revocable at [RBS's] discretion and thus fell further short of the high benchmark established in *Already*."⁴³

Turning to the *Daubert* issue, which courts of appeals review on an abuse of discretion standard, the Fourth Circuit upheld the exclusion of the expert's testimony on the economic value of the contested trade secrets.⁴⁴ The court agreed that the expert "had not demonstrated that he'd reviewed the alleged trade secrets individually" and made only "conclusory assertions about the trade secrets contained in the database."⁴⁵ The court rejected RBS's argument that an expert does not need

³⁵ *Id.* at 763.

³⁶ *Id.*

³⁷ *Id.* at 765.

³⁸ *Id.* (quoting *Synopsys, Inc. v. Risk Based Sec., Inc.*, 2022 WL 107184, at *1 (E.D. Va. Jan. 11, 2022)).

³⁹ 568 U.S. 85 (2013).

⁴⁰ *Synopsys*, 70 F.4th at 765 (quoting *Already*, 568 U.S. at 91) (emphasis omitted).

⁴¹ *Id.* at 766.

⁴² *Id.* (internal citations and quotations omitted).

⁴³ *Id.*

⁴⁴ *Id.* at 775.

⁴⁵ *Id.* at 774.

to opine on the value of individual trade secrets if he establishes the value of the group of trade secrets, finding that “[e]ven if grouping is appropriate in some cases, it must be done in a way that permits the trier of fact to undertake this review.”⁴⁶

Left with no admissible evidence on the independent economic value of the claimed trade secrets, the Fourth Circuit affirmed summary judgment for Synopsys.

BUILDING SUPPLY DISTRIBUTOR WINS PARTIAL PRELIMINARY INJUNCTION AGAINST RIVAL’S USE OF VENDOR DISCOUNT INFORMATION

Foundation Building Materials, LLC v. Conking & Calabrese, Co., 2023-NCBC-46, 2023 WL 4561583 (N.C. Super. Ct. 2023)

Conking & Calabrese Co. (“Conking”), a regional distributor of building materials, expanded into North Carolina in early 2023.⁴⁷ Foundation Building Materials (“FBM”) is a national supplier and distributor of building materials with an existing branch in Charlotte, NC.⁴⁸ Conking first recruited the branch manager from FBM to run its new Charlotte office⁴⁹ and then seventeen other FBM employees.⁵⁰ On their way out of FBM, different employees emailed to Conking a list of 2,930 Outlook contacts, a price sheet from an FBM vendor, personnel files and other information related to a specific customer that was redacted from the public opinion.⁵¹

FBM sued Conking and several individual defendants in North Carolina court.⁵² FBM won motions for a TRO and for expedited discovery.⁵³ FBM also moved for a preliminary injunction.⁵⁴

North Carolina courts examine six factors to determine whether contested information qualifies as a trade secret:

- (1) the extent to which the information is known outside the business;
- (2) the extent to which it is known to employees and others involved in the business;
- (3) the extent of measures taken to guard the secrecy of the information;
- (4) the value of information to business and

⁴⁶ *Id.*

⁴⁷ Found. Bldg. Materials, LLC v. Conking & Calabrese, Co., 2023-NCBC-46, ¶¶ 15–16 (N.C. Super. Ct. 2023).

⁴⁸ *Id.* ¶¶ 10, 13.

⁴⁹ *Id.* ¶¶ 13, 18–19.

⁵⁰ *Id.* ¶ 20.

⁵¹ *Id.* ¶¶ 31–32, 41, 45, 56.

⁵² *Id.* ¶ 3.

⁵³ *Id.* ¶¶ 4–6.

⁵⁴ *Id.* ¶ 4.

its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could properly be acquired or duplicated by others.⁵⁵

A plaintiff must also show that a defendant (1) knew or should have known of the trade secret, and (2) acquired, disclosed or used it, or had a specific opportunity to do so, without consent.⁵⁶ To win a preliminary injunction, a plaintiff must show a likelihood of success on the merits and that it is likely to suffer irreparable loss without an injunction.⁵⁷

FBM asserted seven categories of trade secrets, and the court granted preliminary injunctions on two. The court found that FBM's vendor pricing information was a trade secret, "[b]ecause the information has competitive value," "[n]either FBM nor its vendors share this information with others" and "[i]nternally, FBM takes steps to secure the information and permits only a few employees to access it."⁵⁸ There was also direct evidence that one ex-FBM employee emailed the price sheet to Conking. The court found that these facts support a likelihood of success as well as irreparable harm.⁵⁹ The court made similar findings for the specific customer information redacted from the public record.⁶⁰

On the personnel file category, the court also found a likelihood of success on the merits, but not irreparable harm.⁶¹ One employee mailed to Conking the personnel files containing compensation information for drivers from FBM, which were valuable for recruiting those drivers away from FBM.⁶² But all of the drivers whose files were taken had already left FBM.⁶³ With the horse bolted, closing the barn doors would not undo any irreparable harm.

On the remaining categories, the court did not find likelihood of success on the merits. The contact information in the Outlook lists was available in the public domain, and "the record contains no evidence that compiling the contacts took great effort."⁶⁴ Several other categories of trade secrets—customer credit information and market product utilization rates—bore no evidence that any ex-employee transmitted that data to Conking.⁶⁵ The court reasoned that the ability to access a trade secret,

⁵⁵ *Id.* ¶ 66.

⁵⁶ *Id.* ¶ 68.

⁵⁷ *Id.* ¶ 58.

⁵⁸ *Id.* ¶ 81.

⁵⁹ *Id.* ¶¶ 82, 94.

⁶⁰ *Id.* ¶¶ 83–84, 94.

⁶¹ *Id.* ¶¶ 92, 94.

⁶² *Id.* ¶ 92.

⁶³ *Id.* ¶ 94.

⁶⁴ *Id.* ¶ 72.

⁶⁵ *Id.* ¶¶ 76, 88.

without more, is not enough to show misappropriation, explaining that “North Carolina courts are reluctant to grant injunctive relief solely on the basis of *threatened* misappropriation without proof of *actual* misappropriation.”⁶⁶

SECOND CIRCUIT OVERTURNS \$284 MILLION UNJUST ENRICHMENT JURY VERDICT

***Syntel Sterling Best Shores Mauritius Limited v. TriZetto Group*, 68 F.4th 792 (2d Cir. 2023).**

The TriZetto Group (“TriZetto”) develops healthcare administration software, including Facets, a widely used platform.⁶⁷ In 2010, TriZetto subcontracted with Syntel Sterling Best Shores Mauritius Limited (“Syntel”) to provide Facets support services to clients on behalf of, rather than in competition with, TriZetto.⁶⁸ In 2014, after a TriZetto competitor acquired Syntel, Syntel terminated its service agreement with TriZetto while requesting payment of rebates owed under the contract.⁶⁹ TriZetto refused to pay.⁷⁰ Syntel then sued TriZetto for breach of contract and other claims.⁷¹ TriZetto counterclaimed for misappropriation of trade secrets related to the Facets software under the DTSA and New York law.⁷²

At trial, Syntel did not contest that it downloaded and used the information claimed as trade secrets, arguing instead that their use was within the scope of the service agreement.⁷³ The jury was instructed to consider three damages theories if it found that Syntel misappropriated TriZetto’s trade secrets: (1) TriZetto’s lost profits of \$8.5 million; (2) Syntel’s avoided costs as unjust enrichment, the amount Syntel would have needed to spend to legitimately produce the software it misappropriated; and (3) the amount of a reasonable royalty.⁷⁴ The jury found for TriZetto on all counts and awarded both avoided costs and a reasonable royalty under state law.⁷⁵ The total compensatory damages award was \$284 million with \$567 million added in punitive damages.⁷⁶ The district court also issued a permanent injunction enjoining Syntel from using any of the asserted trade secrets.⁷⁷

⁶⁶ *Id.* ¶ 78 (emphasis added).

⁶⁷ *Syntel Sterling Best Shores Mauritius Ltd. v. TriZetto Grp.*, 68 F.4th 792, 796 (2d Cir. 2023)

⁶⁸ *Id.* at 797.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 798.

⁷⁴ *Id.*

⁷⁵ *Id.* at 799.

⁷⁶ *Id.*

⁷⁷ *Id.*

Syntel filed a renewed motion for judgment as a matter of law (“JMOL”) and, in the alternative, for a new trial and remittitur.⁷⁸ Syntel argued that (1) TriZetto failed to identify trade secrets with the requisite specificity; (2) the alleged misappropriation was conduct permitted by its contract with TriZetto; and (3) the DTSA does not permit the award of avoided costs in this case.⁷⁹ The district court denied the motions for JMOL and for a new trial, but TriZetto accepted remittitur of the punitive damages to \$284 million.⁸⁰

On appeal, the Second Circuit held that the specificity of the trade secrets was a question of fact properly decided by the jury.⁸¹ The court further held that the contract “is unambiguous; Syntel was free to compete with TriZetto, but it was still obligated to abide by the [service agreement’s] confidentiality provisions.”⁸² The court expressed particular skepticism that TriZetto would have intended to contract away its confidential information to Facet, “the *very thing* it values most.”⁸³

However, the Second Circuit found error in the damages award. The DTSA permits “damages for actual loss caused by the misappropriation” and “damages for any unjust enrichment caused by the misappropriation . . . that is not addressed in computing damages for actual loss.”⁸⁴ “The statute thus permits a plaintiff to recover both its actual losses and a misappropriator’s unjust benefit caused by misappropriation, so long as there is no double counting.”⁸⁵ But the court explained that unjust enrichment should only be awarded in addition to actual damages when there is some additional value lost. “[T]he relevant question is: did Syntel’s misappropriation injure TriZetto *beyond* its actual loss of \$8.5 million in lost profits?”⁸⁶ In this case, the answer is no; except for Syntel’s now-ended misuse, the Facets software was not more widely disclosed to the public.⁸⁷ “TriZetto’s valuable trade secrets are still that—valuable and secret.”⁸⁸ Syntel was also no longer being enriched by access to Facets, unjustly or otherwise, following the permanent injunction.⁸⁹

The Second Circuit thus vacated the damages judgment.⁹⁰ As a procedural sidenote, the case was remanded for the district court to consider TriZetto’s

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 801.

⁸² *Id.* at 805.

⁸³ *Id.* at 804–05.

⁸⁴ *Id.* at 808–09 (quoting 18 U.S.C. § 1836(b)(3)(B)).

⁸⁵ *Id.* at 809.

⁸⁶ *Id.* at 810.

⁸⁷ *Id.* at 811.

⁸⁸ *Id.* at 812.

⁸⁹ *Id.* at 811.

⁹⁰ *Id.* at 814.

reasonable royalty damages theory, not actual damages, because TriZetto did not argue for actual damages as an alternative to unjust enrichment on appeal.⁹¹

EIGHTH CIRCUIT RULES THAT, IN SOME CIRCUMSTANCES, IT IS SUFFICIENT TO PLEAD TRADE SECRET MISAPPROPRIATION ON INFORMATION-AND-BELIEF

***Ahern Rentals, Inc. v. EquipmentShare.com, Inc.*, 59 F.4th 948 (8th Cir. 2023)**

Ahern Rentals is a large national company that rents construction equipment.⁹² EquipmentShare was founded in 2014 and became a top competitor to Ahern.⁹³ As it expanded, EquipmentShare hired many former employees from Ahern.⁹⁴ Ahern sued EquipmentShare and several individual defendants in 2019, alleging that EquipmentShare recruited Ahern employees to steal trade secrets before leaving to work at EquipmentShare.⁹⁵ The federal causes of action were consolidated as a multidistrict litigation (MDL).⁹⁶ In 2020, Ahern initiated a new suit against EquipmentShare and another company, EZ.⁹⁷ EZ allows users to make money by renting out their own equipment through EquipmentShare.⁹⁸ EquipmentShare and EZ thus have a close business relationship.⁹⁹

Ahern's suit alleged, based on "information and belief," that EZ was using trade secrets obtained illegally by EquipmentShare with knowledge that the information was ill gotten.¹⁰⁰ EZ moved to dismiss Ahern's claims, which the district court granted, noting that all claims alleging EZ's involvement and knowledge were pled solely upon information and belief.¹⁰¹ The district court held that "allegations pled only on information and belief do not nudge the claim[s] across the line from conceivable to plausible as required by *Iqbal* and *Twombly*."¹⁰²

On appeal, the Eighth Circuit considered the sufficiency of Ahern's complaint against EZ, noting that "we have never fully articulated when plaintiffs may use upon-information-and-belief pleadings in a complaint to satisfy *Twombly*'s plausibility requirement."¹⁰³ But the court reasoned that "where the proof supporting the

⁹¹ *Id.* at 814–15.

⁹² *Ahern Rentals, Inc. v. EquipmentShare.com, Inc.*, 59 F.4th 948, 951 (8th Cir. 2023).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 952.

¹⁰¹ *Id.*

¹⁰² *Id.* at 953 (internal citations and quotations omitted). *Iqbal* and *Twombly* refer respectively to *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007).

¹⁰³ *Id.*

allegation is within the *sole possession and control of the defendant* or where the belief is *based on sufficient factual material that makes the inference of culpability plausible*,” allegations pled only on information and belief “are not categorically insufficient to state a claim for relief.”¹⁰⁴

The court then analyzed Ahern’s complaint under this framework and concluded that (1) “Ahern adequately alleges the existence of protectable trade secrets,” but (2) it is a “closer question . . . whether Ahern plausibly alleges that EZ has ‘misappropriated’ those trade secrets.”¹⁰⁵ Misappropriation under the DTSA and Missouri law includes an element of knowledge that the trade secret was “derived from or through a person who had used improper means to acquire the trade secret.”¹⁰⁶ The court concluded that because the “detailed allegations, taken as true, make clear that EquipmentShare’s programs were at the core of EZ’s operations . . . it is entirely plausible to infer that EZ *knew* it was using programs developed through the exploitation of trade secrets.”¹⁰⁷ The Eighth Circuit thus reversed EZ’s dismissal and remanded to the district court.¹⁰⁸

CONCLUSIONS

This White Paper highlights recent noteworthy trade secret cases. In these cases, courts have provided insight into several key trade secret issues, including:

- The importance of defining trade secrets in clear and definite terms.
- When customer lists and knowledge of unfavorable regulatory action against a company may constitute trade secrets.
- The circumstances in which a covenant not to sue might moot an action seeking a declaratory judgment that a trade secret was not misappropriated.
- When direct and circumstantial evidence of trade secret misappropriation can sustain a preliminary injunction under the North Carolina trade secret statute.
- Whether unjust enrichment damages are permitted by the DTSA when actual damages would make a trade secret plaintiff whole.
- When the knowledge element of misappropriation may be plausibly alleged on the basis of “information and belief” at the pleading stage.

Readers are encouraged to contact [Kelsey I. Nix](#), Co-Chair of Smith Anderson’s Intellectual Property Litigation practice, with questions or for more information regarding trade secrets or intellectual property litigation.

Special thanks to contributing author and Smith Anderson summer associate, Ken Chu.

¹⁰⁴ Id. at 954 (emphasis added).

¹⁰⁵ Id. at 955–56.

¹⁰⁶ Id. at 956.

¹⁰⁷ Id.

¹⁰⁸ Id. at 958.

DISCLAIMER: Because of the generality of this paper, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.

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