What do you have to Show to Prove that Someone Misappropriated Trade Secrets?

Devin Bates
dbates@mwlaw.com
(501) 688.8864

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What must you show to prove that someone misappropriated trade secrets? The Arkansas Uniform Trade Secrets Act provides that misappropriation of trade secrets can be shown in one or more of three ways: acquisition or physical retention, disclosure, or use.

First, in order to make a claim for trade secret misappropriation, a party must make a showing on two elements: (1) the existence of a trade secret, and (2) actual or threatened misappropriation. To the first element, answering the question of whether a trade secret exists can be better understood by reviewing our prior posts in this blog series. But when it comes to the second element, since there are three main ways in which one can show *misappropriation*, this blog post will outline the law on these theories of proving a claim for trade secret misappropriation.

Acquisition as Misuse. One way of showing misappropriation is by showing that an acquirer knew or had reason to know that the trade secret was acquired by improper means but the trade secret is acquired or retained.

Disclosure or Use of Trade Secret as Misuse. Disclosure or use of another's trade secret without express or implied consent constitutes misappropriation where the person either:

- Used improper means to acquire knowledge of the trade secret.
- At the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was:
- derived from or through a person who had used improper means to acquire it;
- acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
- derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use.
- Before a material change of the person's position, knew or had reason to know that:
- the information was a trade secret; and
- knowledge of the information had been acquired by accident or mistake.

Disclosure. Even where a wrongdoer does not actually use a trade secret, the trade secret can be misappropriated and effectively destroyed through public:

- Knowledge of the secret information.
- Disclosure of the secret information.

In such a situation, disclosure constitutes misappropriation under Arkansas law. In such a situation, even if the discloser of the trade secret had no competitive reason for making the disclosure, this is not a defense to allegations that the trade secret was nonetheless misappropriated.

Use. Where the wrongdoer uses the trade secret for competitive reasons, this constitutes misappropriation.

Definition of Improper Means. Throughout this blog post, the term "improper means" has been used above. The Arkansas Uniform Trade Secrets Act defines the term "improper" to mean:

- Theft.
- Bribery.
- Misrepresentation.
- Breach or inducement of breach of duty to maintain secrecy.
- Espionage

As shown above, there are several possible ways in which misappropriation of trade secret claims can be pursued under Arkansas law. When we prosecute trade secret cases, we consider all possible theories and angles, and pursue claims that best advance the goals of our clients.