

## Utah IP Summit

# RECENT DEVELOPMENTS IN TRADE SECRETS LAW (2007-2008)

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Presented by:

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February 13, 2009

Little America Hotel

Salt Lake City, Utah

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R. Mark Halligan is an intellectual property, media and technology partner in the Chicago office of Lovells. He is an accomplished trial lawyer and is widely recognized for his work in trade secrets law. He has been at the forefront of many emerging practice areas, including competitive intelligence, digital evidence recovery, and e-discovery.

Mark's practice focuses on all aspects of trade secrets law, both civil and criminal, including:

- trade secret audits;
- trade secret theft investigations;
- litigation and investigations involving the Uniform Trade Secrets Act and other state statutes and federal statutes, including the Computer Fraud and Abuse Act and the Economic Espionage Act;
- restrictive covenants;
- antitrust;
- counseling;
- expert witness engagements; and
- emerging spoliation and electronic evidence discovery issues.

Mark is a frequent lecturer and panelist on recent developments in trade secrets law and emerging discovery and litigation issues. He is also a prolific author, including his most recent book "Trade Secret Asset Management: An Executive's Guide to Information Asset Management, Including Sarbanes-Oxley Accounting Requirements for Trade Secrets" (Aspatore Books). His works have appeared in legal and trade publications both nationally and internationally, including *The National Law Journal*, *IP Value*, *Executive Counsel Magazine*, *IPLAW360*, *American Bar Association publications*, *The Computer & Internet Lawyer*, *Security Management Magazine*, *Illinois Bar Journal*, and *Corporate Counsel Magazine*, among others.

Mark serves as General Editor of the Illinois Institute for Continuing Legal Education's (IICLE) 2005 edition of the "Intellectual Property Law Handbook," and he is now working on the 2008 edition. He serves on the editorial board of *Intellectual Property LAWCAST* and *Intellectual Property Counselor*. He is the founder of the Trade Secrets and Unfair Competition Committee of the Intellectual Property Law Association of Chicago (IPLAC) and served as President of IPLAC 2001-2002.

He also serves on and chairs several bar and trade association committees, including:

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- Chairman, ABA Intellectual Property Law Section, Committee No. 410, Trade Secrets and Tortious Interference With Contracts (2005-present)
- Chair, Trade Secrets Law Committee, American Intellectual Property Law Association (AIPLA) (2006-2008)
- Co-Chairman, Licensing Executives Society (LES), Trade Secret Licensing Committee (2000-present)
- Chair, REACH Subcommittee of the Trade Secrets Committee, Intellectual Property Owners Association (2007-2008)
- Chair, Federal Trade Secrets Statute Subcommittee, Intellectual Property Owners Association (2007-2008)

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**R. MARK HALLIGAN'S  
TRADE SECRET CASE LAW  
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## **Recent Trade Secrets Cases**

The following is a listing of recent trade secret cases and a short synopsis of cases (Case Nos. 795-892). This survey provides a quick overview of many of the recent developments in trade secrets law around the country.

A more detailed summary (by corresponding case number) can be found at "The Trade Secret Case Law Database" on the Internet, which is maintained by R. Mark Halligan at [www.asksam.com/halligan/](http://www.asksam.com/halligan/).

795. **UNITED STATES GYPSUM CO. v. LAFARGE NORTH AMERICA, INC.**, 2007 U.S. Dist. LEXIS 25586 (N.D. Ill. 2007).

Summary judgment granted as to claims where no evidence of use by defendant; CFAA claims not dismissed; contract claims dismissed for failure of proof of damages; no preemption of fiduciary duty claims; no preemption of non-trade secret information.

796. **STAFFORD TRADING, INC. v. LOVELY**, 2007 U.S. Dist. LEXIS 37140 (N.D. Ill. 2007).

Motion for summary judgment denied; preemption of fraud and unjust enrichment claims; failure to plead fraud claim with particularity; fraudulent concealment claim dismissed.

797. **WOO v. FIREMAN'S FUND INS. CO.**, 137 Wn. App. 480; 154 P.3d 236 (Wash. Ct. App. 2007).

Forfeiture of alleged trade secret rights in State Farm claim manuals admitted in open court and reversal of order sealing exhibits.

798. **MONOLITHIC POWER SYS., INC. v. O2 MICRO INT'L, LTD.**, 2007 U.S. Dist. LEXIS 22556 (N.D. Cal. 2007).

Preemption of California Unfair Competition Law (UCL) claim by California UTSA claim; a UCL claim cannot request disgorgement of illicitly-gained profits unless those funds were previously owned by the plaintiff.

799. **AMERICAN HARDWARE MFRS. ASS'N v. REED ELSEVIER, INC.**, 2007 U.S. Dist. LEXIS 39636 (N.D. Ill. 2007).

De-designation motion for "confidential" documents under protective order; distinction between discovery and evidentiary stages of litigation.

800. **POSDATA CO., LTD. v. KIM**, 2007 U.S. Dist. LEXIS 48359 (N.D. Cal. 2007).

Balance of hardships tips heavily in favor of plaintiffs on TRO motion because defendant claims that they do not need or use plaintiff's alleged trade secrets; injunction granted.

801. **H.B. FULLER CO. v. MOONEY**, 2007 U.S. Dist. LEXIS 45383 (D. Minn. 2007).

Injunction based on non-compete contract; not trade secret misappropriation claim in Minnesota.

802. **INTER-TEL (DELAWARE), INC. v. FULTON COMMC'NS TEL. CO.**, 2007 U.S. Dist. LEXIS 43219 (D. Ariz. 2007).

Preliminary injunction based on post-employment restrictions; Arizona UTSA and Unfair Competition [Restatement (Third) of Unfair Competition § (1995)].

803. **WILLIAMSON v. REXAM BEVERAGE CAN CO.**, 2007 U.S. Dist. LEXIS 44919 (S.D. Ohio 2007).

No standing for alleged breach of confidentiality contract; Rule 8 Motion for More Definite Statement of Trade Secret Misappropriation claim denied.

804. **MDTV MED. NEWS, INC. v. WEINSTOCK**, 2007 U.S. Dist. LEXIS 8806 (S.D. Cal. 2007).

No preemption of California tortious interference and defamation claim because not entirely or substantially based on trade secret claims no evidence of misappropriation; conversion claim dismissed.

805. **FRANKENMUTH FUNDRAISING CORP. v. SCHWAN'S HOME SERV., INC.**, 2007 U.S. Dist. LEXIS 12537 (E.D. Mich. 2007).

Breach of contract dismissed due to contractual bar as consequential damages; no proof of trade secrets; no proof of fiduciary duty; no proof of fraud; summary judgment granted on all counts.

806. **GREIF, INC. v. MACDONALD**, 2007 U.S. Dist. LEXIS 14617 (W.D. Ky. 2007).

If misappropriation is only one part of claim; no preemption under Kentucky UTSA; motion to dismiss "bad faith" counterclaim denied.

807. **APPLIED HYDROGEL TECH., INC. v. RAYMEDICA, INC.**, 2007 U.S. Dist. LEXIS 16243 (S.D. Cal. 2007).

Conversion claim serving preemption because involves non-trade secret information but conversion claim is dismissed on independent grounds for failure to the "personal property" subject to conversion.

808. **MONTGOMERY v. ETREPPID TECHS., LLC**, 2007 U.S. Dist. LEXIS 20206 (D. Nev. 2007).

No Section 301 preemption of UTSA claim because a trade secret misappropriation claim protects rights qualitatively different than copyright rights.

809. **WHEELER v. MONTGOMERY**, 2007 U.S. Dist. LEXIS 20715 (D. Or. 2007).

Motion for summary judgment dismissing trade secret misappropriation claim under Oregon Uniform Trade Secrets Act denied.

810. **NAVARRO v. ESKANOS & ADLER**, 2007 U.S. Dist. LEXIS 24864 (N.D. Cal. 2007).

Motion to de-designate "confidential" documents under Rule 26(c) Protective Order; competitive or commercial value analysis.

811. **DSMC, INC. v. CONVERA CORP.**, 479 F. Supp. 2d 68 (D. D.C. 2007).

A trade secret is one of the most elusive and difficult concepts in the law to define; whether certain information constitutes a trade secret is best resolved by a fact finder after full presentation of evidence from both sides; conspiracy cause of action preempted by VUTSA.

812. **ATCO MFG. CO. v. SHARE CORP.**, 2007 U.S. Dist. LEXIS 37503 (E.D. Tenn. 2007).

"Same Proof" standard for preemption; if proof of a non-UTSA claim would simultaneously establish trade secret misappropriation, it is preempted irrespective of surplus elements or proof.

813. **CONSULTING ENGINEERS, INC. v. GEOMETRIC SOFTWARE SOLUTIONS**, 2007 U.S. Dist. LEXIS 25150 (E.D. Va. 2007).

No personal jurisdiction over foreign corporations (India) in software source code dispute.

814. **MCGOUGH v. NALCO CO.**, 2007 U.S. Dist. LEXIS 48522 (N.D. W. Va. 2007).

30-year field representative agreement decimated by West Virginia Judge Goodwin; no likelihood of success on UTSA claim.

815. **RESTIVO v. HANGER PROSTHETICS & ORTHOTICS, INC.**, 483 F. Supp. 2d 521 (E.D. La. 2007).

Remembering trade secret information does not absolve defendant from liability under Louisiana Uniform Trade Secrets Act.

816. **ROTOWORKS INT'L LTD. v. GRASSWORKS USA, LLC**, 2007 U.S. Dist. LEXIS 27097 (W.D. Ark. 2007).

Motion for protective order denied; defendants failed to establish that records constituted trade secrets under Arkansas Trade Secrets Act.

817. **INSITUFORM TECHS., INC. v. REYNOLDS, INC.**, 2007 U.S. Dist. LEXIS 28941 (E.D. Mo. 2007)

Ex-employee quits working and agrees to injunction; Court denies motion for summary judgment filed by new employer.

818. **DEARBORN v. EVERETT J. PRESCOTT, INC.**, 486 F. Supp. 2d 802 (S.D. Ind. 2007).

Severable provisions in contract required for "blue pencil" test under Indiana law; choice of law; Indiana public policy overrides contractual choice of law provision; non-competition agreement not enforceable.

819. **GUARDIAN WARRANTY CORP. v. BULGER**, 2007 U.S. Dist. LEXIS 33662 (S.D. Ohio 2007).

Post-employment customer restrictions enforceable; geographical restrictions not enforceable; injunction that flows from breach of contract claims sufficient to protect against a potential violation of Ohio Trade Secrets Act.

820. **CHATTERBOX v. PULSAR ECOPRODUCTS, LLC.**, 2007 U.S. Dist. LEXIS 34022 (D. Idaho 2007).

The UTSA does not wipe out claims of theft, fraud and breach of the duty of loyalty as to non-trade secret information, unjust enrichment and unfair competition claims displaced; fraud claim not displaced; information consisting of multiple elements which are each readily ascertainable may still be a trade secret when considered as a whole.

821. **JDS UNIPHASE CORP. v. JENNINGS**, 473 F. Supp. 2d 697 (E.D. Va. 2007).

Sarbanes-Oxley is not a license to steal documents and break contracts.

822. **JAN MARINI SKIN RESEARCH, INC. v. ALLURE COSMETIC USA, INC.**, 2007 Cal App. Unpub. LEXIS 4183 (Cal. Ct. App. 2007).

Jury verdicts in trade secrets misappropriation case and numerous rulings on appeal in California.

823. **CALENCE, LLC v. DIMENSION DATA HOLDINGS**, 2007 U.S. Dist. LEXIS 36235 (W.D. Wash. 2007).

Denial of summary judgment on trade secret and CFAA claims; summary judgment granted on other claims; owner cannot state claim for conversion when it retains originals.

824. **PARK-OHIO INDUS., INC. v. CARTER**, 2007 U.S. Dist. LEXIS 9095 (E.D. Mich. 2007).

Ohio/Michigan; preliminary injunction granted under Ohio contract and Ohio UTSA.

825. **CENVEO CORP. v. SLATER**, 2007 U.S. Dist. LEXIS 9966 (E.D. Pa. 2007).

No preemption of conversion claim; liability for theft of non-trade secrets.

826. **RRK HOLDING CO. v. SEARS, ROEBUCK AND CO.**, 2007 U.S. Dist. LEXIS 10484 (N.D. Ill. 2007).

Motion for summary judgment denied re new combination of tools; unjust enrichment claim preempted.

827. **SCHLEIFMITTEL GMBH v. DESIGN INDUSTRIAL, INC.**, 2007 U.S. Dist. LEXIS 10847 (M.D. N.C. 2007).

Preliminary injunction granted; invocation of fifth amendment privilege results in greater credence to plaintiff's evidence.

828. **BERRY v. HAWAII EXPRESS SERV., INC.**, 2007 U.S. Dist. LEXIS 15077 (D. Haw. 2007).

Attorney's fees awarded for "bad faith" trade secret misappropriation claim under Hawaii UTSA; Lodestar method applies to calculate attorney's fees.

829. **SPECTRUM CREATIONS, L.P. v. CAROLYN KINDER INT'L, LLC.**, 2007 U.S. Dist. LEXIS 25572 (W.D. Tex. 2007).

No copyright preemption of trade secret misappropriation claims.

830. **NATURALAWN OF AMERICA, INC. v. WEST GROUP, LLC**, 484 F. Supp. 2d 392 (D. Md. 2007).

Franchisor/franchisee; injunctive relief granted; discussion of defendant "self-inflicted" harms.

831. **SERENIC SOFTWARE, INC. v. PROTEAN TECHS., INC.**, 2007 U.S. Dist. LEXIS 31311 (D. Idaho 2007).

Cross-motions for summary judgment on trade secret misappropriation claims denied; genuine issues of material fact.

832. **THIRD PARTY VERIFICATION, INC. v. SIGNATURELINK, INC.**, 2007 U.S. Dist. LEXIS 32238 (M.D. Fla. 2007).

Copyright/trade secret source code litigation; procedures for filing "trade secret" source code with copyright office.

833. **FARM BUREAU LIFE INS. CO. v. AMERICAN NAT'L INS. CO.**, 2007 U.S. Dist. LEXIS 3530 (D. Utah 2007).

Motion for summary judgment denied; questions of fact re existence of trade secrets; evidence of misappropriation; breach of fiduciary duty/loyalty claims; breach of fiduciary duty and duty of loyalty claims.

834. **CARDIOVENTION, INC. v. MEDTRONIC, INC.**, 2007 U.S. Dist. LEXIS 20150 (D. Minn. 2007).

Motions in limine in trade secret litigation including Daubert motions in limine re damages experts.

835. **AMERICAN FAMILY MUT. INS. v. ROTH**, 485 F. 3d 930 (7th Cir. 2007).

Insurance agency; customer information is a trade secret; ownership of trade secret/"grantback" clause; trade secrets can be sold (Judge Posner).

836. **SYNERGETICS, INC. v. HURST**, 477 F.3d 949; 81 U.S.P.Q.2d (BNA) 1714 (8th Cir. 2007).

Jury verdict for trade secret misappropriation affirmed by 8th Circuit Court of Appeals.

837. **CALENCE, LLC v. DIMENSION DATA HOLDINGS**, 2007 U.S. Dist. LEXIS 38043 (W.D. Wash. 2007).

Disputed issues of fact re interference with plaintiff's employee contractual relationships; no evidence of misappropriation by corporate defendants.

838. **HUDSON GLOBAL RESOURCES HOLDINGS, INC. v. HILL**, 2007 U.S. Dist. LEXIS 38326 (W.D. Pa. 2007).

Section 1030(a)(4) CFAA violation; partial non-use injunction.

839. **KOZAK v. MEDTRONIC, INC.**, 2007 U.S. Dist. LEXIS 17701 (S.D. Tex. 2007).

Expert report on damages based on breach of contract; expert testimony on calculation of future damages for the misappropriation of trade secrets excluded.

840. **ABANCO INT'L, INC. v. GUESTLOGIX**, 486 F. Supp. 2d 779 (N.D. Ill. 2007).

No preemption of claims relating to information that does not rise to level of trade secrets; preemption of conspiracy claim because underlying tort is misappropriation of trade secrets.

841. **GENERAL POWER PRODS., LLC v. MTD PRODS., INC.**, 2007 U.S. Dist. LEXIS 21181 (S.D. Ohio 2007).

Arbitration clause limited to disputes involving interpretation of contract; motion to direct arbitration of trade secret misappropriation claims denied.

842. **POLAR MOLECULAR CORP. v. AMWAY CORP.**, 2007 U.S. Dist. LEXIS 84252 (S.D. Mich. 2007).

Motion for summary judgment stayed for 60 days for Rule 56(f) discovery; preemption of common law misappropriation and the conversion and conspiracy claim to the extent based on trade secret misappropriation.

843. **UNIVERSAL ENGRAVING, INC. v. DUARTE**, 19 F.Supp.2d 1140 (D. Kan. 2007).

Preliminary injunction granted against research chemist; duty of loyalty and Computer Fraud & Abuse Act (CFAA) claims for unauthorized access one day before tendering resignation.

844. **STREAMLINE PACKAGING, INC. v. VINTON PACKAGING GROUP, INC.**, 2007 U.S. Dist. LEXIS 74451 (W.D. Mich. 2007).

No standing to assert trade secrets claim due to lack of ownership of trade secret; statutory attorneys' fees granted against Plaintiff under Michigan Uniform Trade Secrets Act.

845. **DIAMOND POWER INT., INC. v. DAVIDSON**, 2007 U.S. Dist. LEXIS 73032 (N.D. Ga. 2007).

Trade secret claims survive summary judgment; Computer Fraud & Abuse Act claim dismissed; other causes of action "based" on trade secret are dismissed.

846. **BROOKHAVEN TYPESETTING SER. v. ADOBE SYS.**, 2007 U.S. Dist. LEXIS 62661 (N.D. Cal. 2007).

Adobe's motion for summary judgment relating to alleged software copyright infringement and trade secret misappropriation granted; breach of contract claim and unfair competition claims also dismissed.

847. **JUSTMED, INC. v. BYCE**, 84 U.S.P.Q.2d (BNA) 1174 (D. Idaho 2007).

Dispute regarding ownership rights in software used in a digital audio larynx device; trade secret misappropriation; conversion; breach of fiduciary duty; punitive damages.

848. **JADAEL INC. v. ELLIOTT**, 2007 U.S. Dist. LEXIS 63696 (M.D. Fla. 2007).

Motion for summary judgment on waiver of trade secret denied; misappropriation may occur where the defendant did not use or disclose the alleged trade secret in its original form; substantial derivation is the test.

849. **RTC INDUS. v. HADDON**, 2007 U.S. Dist. LEXIS 67008 (N.D. Ill. 2007).

No preemption post-*Hecny*; the test is whether plaintiff's claim would lie if the information at issue were non-confidential; non-compete covenant enforceable; defendant's Rule 12(c) Motion for Partial Judgment on the pleadings denied (Judge John F. Grady).

850. **LANDEEN v. PHONEBILLIT, INC.**, 519 F.Supp.2d 844 (S.D. Ind. 2007).

Disclosure outside a confidential relationship destroys the legal protection for trade secrets.

851. **B&B MICROSCOPES v. ARMOGIDA**, 2007 U.S. Dist. LEXIS 70978 (W.D. Pa. 2007).

Employee secretly files patent application; trade secret misappropriation; violation of Section 1030(a)(5) of CFAA by damaging computer data; exemplary damages and attorneys' fees awarded; unfair competition by marketing system as own patent.

852. **BRIDGESTONE AMS. HOLDING, INC. v. MAYBERRY**, 878 N.E.2d 189 (Ind. 2007).

Rule 26(c) Protective Order granted barring disclosure of Bridgestone's skim stock formula; trial court reversed; three-part balancing test.

853. **AM. FAMILY MUT. INS. v. ROTH**, 2007 U.S. Dist. LEXIS 60220 (N.D. Ill. 2007).

Rule to Show Cause for Civil Contempt denied; recommendation of Contempt for failure to return all customer-related information and failure to disclose customer contacts in violation of Preliminary Injunction.

854. **DAVIS v. ADVANCED CARE TECH., INC.**, 2007 U.S. Dist. LEXIS 57783 (E.D. Cal. 2007).

Defendants incorporated and headquartered in Connecticut; California's strong interest and well-settled public policy of protecting resident employees from out-of-state anticompetitive conduct seeking to restrict a citizen employee's mobility and right to pursue any lawful employment trumps Connecticut law.

855. **IN RE LIONEL L.L.C.**, 48 Bankr. Ct. Dec. (LRP) 159 (S.D.N.Y. Bankr. 2007).

After seven years of litigation, Lionel's request for estimation of MTH's trade secrets damages claim in bankruptcy court granted pursuant to 11 U.S.C.S. § 502(c).

856. **GENERAL REINSURANCE CORP. v. ARCH CAPITAL GROUP, LTD.**, 2007 Conn. Super. LEXIS 2629 (Conn. Super. Ct. 2007).

Former employees started reinsurance business; lack of both a covenant not to compete and confidentiality agreement does not entitle a former employee to use a former employer's trade secrets in a competing business; trade secret information retained in one's memory is subject to trade secret misappropriation; loss costs are trade secrets.

857. **EX PARTE COOPER TIRE & RUBBER CO.**, 2007 Ala. LEXIS 229 (Ala. 2007).

A writ of mandamus filed to reverse the trial court's discovery rulings; no writ issued re alleged trade secret information because such information already subject to comprehensive protective order.

858. **JUNCTION SOLUTIONS, LLC v. MBS DEV, INC.**, 2007 U.S. Dist. LEXIS 86958 (N.D. Ill. 2007).

Settlement of first trade secrets case and dismissal with prejudice; second suit filed in Illinois; no res judicata regarding claims arising after settlement; release did not bar claims arising after effective date of settlement.

859. **CDI ENERGY SERVS. v. WEST RIVER PUMPS, INC.**, 2007 U.S. Dist. LEXIS 86293 (D.N.D. 2007).

Five specific instances of misappropriation/misconduct; temporary restraining order granted.

860. **GALLAGHER BENEFITS SERVS. v. DE LA TORRE**, 2007 U.S. Dist. LEXIS 87139 (N.D. Cal. 2007).

Defendant took and used proprietary information, including customer lists, for his own benefit and the benefit of competitors; even if do not qualify as trade secrets, such acts can still be enjoined under Section 17200, California Business and Professions Code or as unfair competition.

861. **EVANS v. MC**, 2007 Conn. Super. LEXIS 2400 (Conn. Super. Ct. 2007).

Voluntary disclosure destroyed the protection afforded a trade secret; on sale bar; invalidation of patent.

862. **THOLA v. HENSHELL**, 164 P.3d 524 (Wash. App. 2007).

Three-step analysis for preemption; a future employer can be vicariously liable for the unlawful conduct of a future employee; law prohibits using trade secret violation to pursue other claims.

863. **STENSTROM PETROLEUM SERVS. GROUP, INC. v. MESCH**, 874 N.E.2d 959 (Ill. App.Ct. 2d Dist. 2007).

Covenant-not-to-compete commences on date of termination for the former employee's employment; spreadsheet data not a trade secret; trial court order affirmed.

864. **AETNA, INC. v. FLUEGEL**, 2007 Conn. Super. LEXIS 3170 (Conn. Super. Ct. 2007).

Motion to close courtroom and seal the transcript granted during presentation by Aetna of its alleged trade secrets.

865. **ICE CORP. v. HAMILTON SUNDSTRAND CORP.**, 2007 U.S. Dist. LEXIS 94712 (D. Kan. 2007).

Court denies Plaintiff's motion to amend complaint; permits inclusion of "unfair competition" type claim in final pretrial order.

866. **MGP INGREDIENTS, INC. v. MARS, INC.**, 2007 U.S. Dist. LEXIS 82609 (D. Kan. 2007).

Motion to Compel Identification of Trade Secrets filed after joint proposed Pretrial Order/Pretrial Conference is moot; Rule 33(d) regarding reasonable efforts not satisfied; motion to compel granted.

867. **BETTA PRODS. v. TRANSGLOBAL COMMUNS.**, 2007 U.S. Dist. LEXIS 95495 (N.D. Cal. 2007).

Voluntary dismissal without prejudice; Plaintiff did not prosecute trade secret claims with an improper motive; motion for attorneys' fees denied.

868. **CONTROL MODULE, INC. v. DATA MGMT.**, 2007 U.S. Dist. LEXIS 90146 (D. Conn. 2007).

A violation of Connecticut UTSA requires wrongful acquisition of trade secret or wrongful use or disclosure of the trade secret; no liability for "misappropriation" for inducing, encouraging, aiding or abetting another to misappropriate a trade secret.

869. **DURA GLOBAL TECHS., INC. v. MAGNA DONNELLY, CORP.**, 2007 U.S. Dist. LEXIS 89650 (E.D. Mich. 2007).

Rule 26(c) Protective Order granted; discovery stayed until list of trade secrets filed under seal; no order barring, changing or supplementing trade secret list; Court cites Rule 15(a) amendment of pleadings.

870. **FINMECCANICA S.P.A. v. GMC**, 2007 U.S. Dist. LEXIS 85268 (E.D. Va. 2007).

28 U.S.C. § 1404(a) transfer of venue in trade secret misappropriation case; granted transfer of case from E.D. Virginia to C.D. of California.

871. **BUCKEYE INT'L., INC. v. UNISOURCE WORLDWIDE, INC.**, 2007 U.S. Dist. LEXIS 85391 (E.D. Mo. 2007).

Rule 1404 (a) motion to transfer trade secrets case from E.D. Missouri to Georgia; non-application of "first filed" rule; alleged misconduct occurred in Georgia; majority of key party and non-party witnesses all reside in Georgia.

872. **AM. CRANE & TRACTOR PARTS, INC. v. REGAL CORP.**, 2007 U.S. Dist. LEXIS 85198 (D. Kan. 2007).

CFAA/misappropriation of trade secrets; pretrial resolution of jurisdictional questions is not appropriate where the jurisdictional issue is dependent upon a question on the merits; the question whether the court has personal jurisdiction requires a determination of whether defendant accessed plaintiff's computer system; wait until trial on the merits.

873. **WEISS v. FIBER OPTIC DESIGNS, INC.**, 2007 U.S. Dist. LEXIS 83585 (E.D. Pa. 2007).

Motion to dismiss claims based on preemption denied; dismissing the claims now would require to make a determination that conduct constitutes misappropriation and that the misappropriated information at issue was a trade secret; inappropriate at this stage of litigation.

874. **PRECISION AUTOMATION, INC. v. TECH. SERVS.**, 2007 U.S. Dist. LEXIS 94555 (D. Or. 2007).

Tortious interference claim not preempted; unfair competition preempted; a plaintiff may not rely on acts that constitute trade secret misappropriation to support other causes of action.

875. **IDEAL AEROSMITH, INC. v. ACUTRONIC USA, INC.**, 2007 U.S. Dist. LEXIS 91644 (W.D. Pa. 2007).

Wiretapping and stored communications claims dismissed; accident or mistake prong of misappropriation relating to re-routed "trade secret" email communications; Pennsylvania UTSA claim not dismissed.

876. **CLEARONE COMMUNS., INC. v. CHIANG**, 2007 U.S. Dist. LEXIS 91693 (D. Utah 2007).

Motion to dismiss source code/object code claims; denied accepting as true all the factual allegations in complaint; no preemption of unjust enrichment claims and/or overlapping valid UTSA claims.

877. **CDI ENERGY SERVS. v. WEST RIVER PUMPS, INC.**, 2007 U.S. Dist. LEXIS 92102 (D.N.D. 2007).

Preliminary injunction to prevent loss of customers denied; there are adequate remedies available at law.

878. **NAT'L COUNCIL ON COMP. INS., INC. v. AM. INT'L GROUP, INC.**, 2007 U.S. Dist. LEXIS 91517 (N.D. Ill. 2007).

Protective Order with inadvertent disclosure provision is consistent with Fed. R. Civ. P. 26(6)(5)(B); "return, sequester or destroy"; "highly confidential" designation (a) must have current applicability to defendant's operations and (b) more likely than not would cause competitive harm to the business operations of the disclosing party.

879. **CANADIAN COMMER. CORP. v. DEP'T OF THE AIR FORCE**, 2008 U.S. App. LEXIS 1859 (D.C. 2007).

Line-item pricing information is subject to Exemption 4 of FOIA; Air Force explanation of no substantial competitive harm to CCC lacks empirical support and is unconvincing.

880. **SILICON IMAGE, INC. v. ANALOGIX SEMICONDUCTOR, INC.**, 2007 U.S. Dist. LEXIS 96073 (N.D. Cal. 2007).

Publication on the Internet does not destroy trade secret status of information if it is sufficiently obscure or transient and has not become generally known in the trade; NDA with limited duration; evidence that confidentiality designations disregarded.

881. **PATRIOT HOMES, INC. v. FOREST RIVER HOUS., INC.**, 2008 U.S. App. LEXIS 444 (7th Cir. 2008).

Preliminary injunction vacated by 7th Circuit Court of Appeals because "trade secrets" not defined with specificity in the injunction.

882. **PRO-COMP MGMT. v. R.K. ENTER., LLC**, 2008 Ark. LEXIS 60 (Ark. 2008).

Award of damages for unjust enrichment calculated by determination of a fair market value as an estimate of the benefit that defendant received by awaiting payment for the fair market value of the trade secret; affirmed by Arkansas Superior Court; no prejudgment interest allowed.

883. **AMERISOURCEBERGEN DRUG CORP. v. AM. ASSOCIATED DRUGGISTS, INC.**, 2008 U.S. Dist. LEXIS 6611 (E.D. Pa. 2008).

Substantial secrecy and competitive advantage to the owner; application of six-factor test; compilations of financial information; question of fact for jury.

884. **LIGHTHOUSE WORLDWIDE SOLUTIONS v. GIANDOMENCIO**, 2008 Cal. App. Unpub. LEXIS 922 (2008).

Trade secret injunction affirmed in California; injunction against soliciting plaintiff's confidential customers or marketing or selling a laser particle counter having the same or substantially the same proprietary design specifications affirmed.

885. **NEW MEDIA STRATEGIES, INC. v. PULPFREE, INC.**, 2008 D.C. App. LEXIS 21 (D.C. 2008).

Whether Defendant was on notice of alleged trade secret misappropriation depends upon a determination of the scope of the alleged trade secret; motion for summary judgment on statute-of-limitations grounds reversed.

886. **MODIS, INC. v. BARDELLI**, 2008 U.S. Dist. LEXIS 4227 (D. Conn. 2008).

CFAA claim for "exceeding authorization" granted because employment agreement provided that authorization to plaintiff's database was limited to access "in furtherance of Modis' Business"; jurisdictional law requires factual allegations.

887. **KELLY SERVS. v. EIDNES**, 2008 U.S. Dist. LEXIS 1799 (E.D. Mich. 2008).

Loss of accounts will satisfy the \$75,000 diversity requirement in a trade secret misappropriation case.

888. **KRAUSS-MAFFEI CORP. v. DONOVAN**, 2008 U.S. Dist. LEXIS 2024 (E.D. Ky. 2008).

Former employee files lawsuit in Kentucky; former employee in Michigan; sufficient minimum contacts to litigate case in Kentucky.

889. **PRE-PAID LEGAL SERVS. v. HARRELL**, 2008 U.S. Dist. LEXIS 1773 (E.D. Okla. 2008).

The fact that a small portion of the information that forms the trade secret was publicly available in an uncompiled manner (such as a particular associate's name or phone number in a phone book) does not disqualify it from being a trade secret.

890. **UNIVERSAL IMAGINE PRINT GROUP, LLC v. MULLEN**, 2008 U.S. Dist. LEXIS 624 (N.D. Ill. 2008).

Rule 12(b)(6) dismissal of CFAA and Illinois Computer Tampering Act claims denied; resolution of the preemption question set out in the instant motion would require an evidentiary determination of what Defendant took.

891. **T.D.I. INT'L, INC. v. GOLF PRESERVATIONS, INC.**, 2008 U.S. Dist. LEXIS 7427 (E.D. Ky. 2008).

Conversion claim preempted; breach of fiduciary duty/breach of loyalty claims not based on trade secret misappropriation survive.

892. **GUANG DONG LIGHT HEADGEAR FACTORY CO. v. ACI INT'L, INC.**, 2008 U.S. Dist. LEXIS 526 (D. Kan. 2008).

Creation of personal email accounts provides circumstantial evidence of trade secret misappropriation; motion to dismiss civil conspiracy claim denied.

893. **R.K. ENTERPRISES, LLC v. PRO-COMP MANAGEMENT, INC.**, 2008 Ark. LEXIS 53 (Super. Ct. Ark. 2008).

Defendant gained a benefit by using the trade secrets without paying for development of the trade secrets and the trial court did not err in including these costs in the calculation for unjust-enrichment damages.

894. **AL MINOR & ASSOCIATES, INC. v. MARTIN**, 117 Ohio St.3d (2008).

Ohio Supreme Court holds that information does not lose its status as a trade secret if it has been memorized; it is the information that is protected by the UTSA regardless of the manner, mode or form in which it is stored -- whether on paper, in a computer, in one's memory, or in any other medium.

895. **BLACK & DECKER (US), INC. v. SMITH**, 2008 U.S. Dist. LEXIS 53021 (W.D. Tenn. 2008).

Alleged violations of CFAA 1030(a)(2)(C), 1030 (a)(4), 1030(a)(5)(A); Employee Access Agreement; transferring documents from a secure server to a non-secure drive constitutes a Section 1030(a)(5)(A)(i) violation.

896. **MINTEL INTERNATIONAL GROUP, LTD v. NEERGHEEN**, 2008 U.S. Dist. LEXIS 54119; 27 I.E.R. Cas. (BNA) 1876 (N.D. ILL. 2008).

Likelihood of success on merits of showing "exceeded authorized access" by employee sending confidential information to his personal email address; TRO granted.

897. **RRK HOLDING CO. v. SEARS, ROEBUCK AND CO.**, 2008 U.S. Dist. LEXIS 41761 (N.D. ILL. 2008).

No "head start" limitation of monetary damages under the ITSA; causation argument regarding damages rejected; if Defendant had not misappropriated trade secret; consumer would not have had option to buy from defendant.

898. **LLIGE v. VERITY**, 2008 U.S. Dist. LEXIS 26164 (N.D. Calif. 2008).

Customer information can be protected under California UTSA; non-compete clause narrowly tailored to protect trade secrets; right to terminate employee for refusal to sign noncompete agreement.

899. **FAST FOOD GOURMET v. LITTLE LADY FOODS, INC.**, 542 F.Supp.2d 849 (N.D. ILL. 2008).

Alleged frozen pizza trade secret misappropriation; failure to seasonably supplement trade secret identification interrogatories granted in part; Defendants' motion for summary judgment denied.

900. **AETNA, INC. v. FLUEGEL**, 2008 Conn. Super. LEXIS 326 (2008).

Former executive in charge of strategic planning joins non-direct competitor; court holds it is unfair to create non-compete agreement after the fact; refusal to apply inevitable disclosure doctrine.

901. **MPC CONTAINMENT SYSTEMS, LTD v. MORELAND**, 2008 U.S. Dist. LEXIS 60546 (N.D. ILL. 2008).

Six-factor test applied; motion for summary judgment as to design drawings for water flexible storage tanks denied; security measures questions of fact; evidence of derivation from Plaintiff's trade secrets.

902. **VETERAN MEDICAL PRODUCTS, INC. v. BIONIX DEVELOPMENT CORP.**, 2008 U.S. Dist. LEXIS 29827 (W.D. Mich. 2008).

*Motion In Limine* to prevent reference to the alleged confidential information as "trade secrets" requires special instructions to jury that witness or attorney reference is descriptive with no legal effect.

903. **VERITAS OPERATING CORP. v. MICROSOFT CORP.**, 2008 U.S. Dist. LEXIS 8166 (W.D. Wash. 2008).

Microsoft's Motion to Dismiss denied; Washington's Economic Loss Rule does not bar UTSA claim; no unfair competition claim for breach of contract.

904. **INTEGRATED GENOMICS, INC. v. KYRPIDES**, 2008 U.S. Dist. LEXIS 16838 (N.D. ILL. 2008).

Reasonableness of non-compete agreement cannot be decided on Motion to Dismiss; no ITSA preemption under Hecny non-confidential information rule.

905. **CARDIONET, INC. v. LIFEWATCH CORP.**, 2008 U.S. Dist. LEXIS 15938 (N.D. ILL. 2008).

ITSA preemption does not apply to duties imposed by law that are not dependent upon the existence of competitively significant secret information (Hecny); CFAA motion to dismiss denied based on "impairment" of date.

906. **PROSONIC CORP. v. STAFFORD**, 539 F.Supp.2d 999 (S.D. Ohio 2008).

Motion for Preliminary Injunction under Ohio UTSA and non-compete agreement with activity restrictive of no work on Sonic Drilling projects.

907. **WOLFE TORY MEDICAL, INC. v. C.R. BARD, INC.**, 2008 U.S. Dist. LEXIS 13867 (D. Utah 2008).

Plaintiff's Utah UTSA claim not barred by economic Loss rule even though the duty comprising the basis of the UTSA claim arose from the execution of the confidentiality agreement.

908. **WILSON MANUFACTURING CO. v. FUSCO**, 2008 Mo. App. LEXIS 709; 27 I.E.R. Cas. (BNA) 1313 (Ct. App. Mo. 2008).

Employer wins on appeal; a party can establish an UTSA claim without showing the existence of an agreement.

909. **PINCHEIRA v. ALLSTATE INSURANCE CO.**, 2008 NMSC 49; 2008 N.M. LEXIS 445 (N.M. Sup. Ct. 2008).

Supreme Court of New Mexico addresses the intricate interplay among discovery and privilege rules relating to trade secrets; New Mexico trade secret privilege; right to a protective order; evidentiary hearing; discovery-sharing with other litigants.

910. **HARDY v. TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA**, 2008 Phila. Ct. Com. Pl. LEXIS 42 (2008).

Educational business program for athletes; idea submission not a trade secret because intentionally placed in public domain for profit; relative case of duplication; trade secret claims dismissed.

911. **SP MIDTOWN, LTD v. URBAN STORAGE, L.P.**, 2008 Tex. App. LEXIS 3364 (Ct. App. Tex. 2008).

Statutory claim: Section 31.05 Theft of Trade Secrets; Texas Theft Liability Act and common law claim for trade secret misappropriation; no-evidence summary judgment reversed.

912. **AGS CAPITAL CORP., INC. v. PRODUCT ACTION INTERNATIONAL, LLC**, 884 N.E.2d 294 (Ct. App. Ind. 2008).

Indiana UTSA does not preempt Indiana RICO claim; affirm after ego determination; barring all participation in operations of competitor overturned; \$2,000 injunction but not inadequate.

913. **APC FILTRATION, INC. v. BECKER**, 2008 U.S. Dist. LEXIS 59228 (N.D. ILL. 2008).

Timeline shows breach of Fiduciary duty; judgment as to customer lists; historical sales information and pricing information granted; non-disclosure agreement not required.

914. **CENTRAL VALLEY GENERAL HOSPITAL v. SMITH**, 162 Cal. App.4th 501; 75 Cal. Rptr.3d 771 (Calif. 5th Dist. 2008).

California's rejection of the inevitable disclosure doctrine does not mean that threatened misappropriation also must be rejected as a basis for injunctive relief; Calif. Civil Code 3426.2 (UTSA): "Actual or threatened misappropriation may be enjoined."

915. **FREEMAN v. BROWN HILLER, INC.**, 102 Ark. App. 76 (Ct. App. Ark. 2008).

An injunction may issue if there is evidence that an inevitable misappropriation will occur; the single most important asset of most businesses is their stock of customers and protection of that asset is a legitimate interest; preliminary injunction affirmed.

916. **AMERICAN FAMILY MUTUAL INSURANCE CO. v. ROTH**, 381 Ill. App.3d 760; 886 N.E.2d 1149 (1st Dist. 2008).

No duty to defend Illinois trade secrets misappropriation claim.

917. **SPECTRALYTICS, INC. v. CORDIS CORP.**, 2008 U.S. Dist. LEXIS 69567 (D. Minn. 2008).

Trade secret statute of limitations; discovery rule; if Plaintiff knew or should have known; suspicion is not the same as knowledge; Rule 11 analogy rejected; summary judgment denied.

918. **CUNNINGHAM v. SMITHKLINE BEECHAM**, 2008 U.S. Dist. LEXIS 49016 (N.D. Ind. 2008).

Motion to Unseal Paxil documents granted; bald assertions confidentiality insufficient; a party's entitlement to protection must find its roots in the law of trade secrets; privilege or statutory entitlement.

919. **J. RETTENMAIER USA LP v. BODNER**, 2008 U.S. Dist. LEXIS 52332; 27 I.E.R. Cas. (BNA) 1686 (W.D. Mich. 2008).

Multi-function dietary cellulose fibers used as additives or filler agents for pet food; Defendant's improper use of Plaintiff's trade secrets to start a new manufacturing venture and solicit purchasers of plaintiff's products will result in the eroding if not the destruction of plaintiff's competitive role in the market; preliminary injunction granted.

920. **OTHENTEC LIMITED v. PHELAN**, 526 F.3d 135; 86 U.S.P.Q.2d (BNA) 1741 (4th Cir. 2008).

The nonmoving party cannot create a genuine issue of material fact through mere speculation or the building on one inference upon another; no objective evidence of trade secret misappropriation.

921. **I-FLOW CORP. v. PEX MEDICAL TECHNOLOGIES, INC.**, 2008 U.S. Dist. LEXIS 44551; 87 U.S.P.Q.2d (BNA) 1470 (S.D. Calif. 2008).

Motion to compel identification of trade secrets under the California UTSA; 2019.210; compiled data resulting from I-Flow's years of internal testing analysis and experimentation, superior and unique base of knowledge is sufficient.

922. **XANTREX TECHNOLOGY INC. v. ADVANCED ENERGY INDUSTRIES, INC.**, 2008 U.S. Dist. LEXIS 41206 (D. Colo. 2008).

Xantrex employee sent confidential information to wife's email address; external hard drive; UTSA and CFAA claims outside forum selection clause; motion for preliminary injunction granted.

923. **HARSCO CORP. v. PIONTEK**, 2008 U.S. Dist. LEXIS 17104 (M.D. Tenn. 2008).

Design and components of rotary serrator products line; six-factor test; oral confidentiality agreement is sufficient; preliminary injunction granted.

924. **ALI v. FASTENERS FOR RETAIL, INC.**, 544 F.Supp.2d 1064 (W.D. Calif. 2008).

Inventor entered into a 2-year NDA with fastener company regarding a "Smart Pusher" inventory system; allegation secretly designed competing product while NDA inefficient.

925. **MASSEY COAL SERVICES, INC. v. AVAILABLE PLASTICS, INC.**, 249 F.R.D. 477 (S.D. Va. 2008).

Motion to de-classify "confidential" documents under Protective Order granted; release to certain third-party entities denied.

926. **IDEAL AEROSMITH, INC. v. ACUTRONIC USA, INC.**, 2008 U.S. Dist. LEXIS 33463 (W.D. Pa. 2008).

UTSA claim not preempted by Federal Wiretap and Stored Communications Act (SCA); no preemption of unfair competition claim by UTSA because no determination of trade secret status of information.

927. **CEMEN TECH, INC. v. THREE D INDUSTRIES, L.L.C.**, 753 N.W.2d 1 (Sup. Ct. Ia. 2008).

Mobile volumetric concrete mixers; NDA and letter of intent re prospective purchase of business; a trade secret need not be in writing; potential buyers can be liable for trade secret misappropriation; summary judgment reversed by Iowa Supreme Court.

928. **CYPRESS SEMICONDUCTOR CORP. v. THE SUPERIOR COURT OF SANTA CLARA COUNTY**, 163 Cal. App.4th 575; 77 Cal. Rptr.3d 685 (6th Dist. 2008).

Statute of Limitations starts to run when knows or reasonably should have known that third party misappropriated trade secret; the third party's actual state of mind is irrelevant.

929. **BINARY SEMANTICS LIMITED v. MINITAB, INC.**, 2008 U.S. Dist. LEXIS 28602 (M.D. Tenn. 2008).

Employer theft of trade secrets from Company protected computer is a valid CFAA Section 1030 (a)(4) claim; RICO claim dismissed.

930. **COMBINED INSURANCE COMPANY OF AMERICA v. WIEST**, 2008 U.S. Dist. LEXIS 61436 (W.D. Va. 2008).

Tort claims (tortious interference, breach of fiduciary duty, conversion) can be pled in conjunction with breach of contract claim; claims do not exist solely by virtue of the contract; email of confidential information to personal email account constitutes conversion.

931. **DEGUSSA ADMIXTURES, INC. v. BURNETT**, 277 Fed. Appx. 530; 2008 U.S. App. LEXIS 10017 (6th Cir. 2008).

Award of attorney's fees under Michigan UTSA for "bad faith" claim of misappropriation affirmed after voluntary dismissal; action filed in an attempt to stop bleeding from self-inflicted wounds improper.

932. **UAP HOLDING CORP v. MAITOZA**, 2008 U.S. Dist. LEXIS 40940 (W.D. Wash. 2008).

Fiduciary duty and unfair competition claims preempted by Washington UTSA; tortious interference based on employee raiding fails because no evidence of improper nature or improper means.

933. **BENEFIT RESOURCES, INC. v. APPRIZE TECHNOLOGY SOLUTIONS, INC.**, 2008 U.S. Dist. LEXIS 39701 (D. Minn. 2008).

Preliminary injunction to enjoin former employee from working for competitor; circumstantial evidence insufficient; a claim of trade secret misappropriation should not act as an *ex post facto* covenant not to compete; products different.

934. **HAMMERTON, INC. v. HEISTERMAN**, 2008 U.S. Dist. LEXIS 38036 (D. Utah 2008).

Customer list compiled over 10 years at great expense; circumstantial evidence; access and similarity sufficient to prove misappropriation; 27% of Plaintiff's customers on Defendant's customer list; motion for summary judgment denied.

935. **HANGER PROSTHETICS & ORTHOTICS, INC. v. CAPSTONE ORTHOPEDIC, INC.**, 2008 U.S. Dist. LEXIS 64756 (E.D. Calif. 2008).

Employees that access their employer's computers to obtain or delete business information for their own personal benefit or the benefit of a competitor "without authorization" or exceeding authorization with the meaning of the CFAA genuine issue of material fact re Section 1030(a)(4) violation; patient customer data protected trade secrets.

936. **FISHKIN v. SUSQUEHANNA PARTNERS, G.P.**, 2008 U.S. Dist. LEXIS 47551 (E.D. Pa. 2008).

Applying 6-factor test, Court finds that alleged proprietary trading concept, formula and spreadsheet were too widely known and too easily ascertainable to be protected as trade secrets.

937. **SOUTHERN NUCLEAR OPERATING COMPANY, INC. v. ELECTRONIC DATA SYSTEMS CORP.**, 273 Fed. Appx. 834; 2008 U.S. App. LEXIS 8571 (11th Cir. 2008).

EDS was hired by SNC to provide customized software and computer services to manage SNC's documents; SNC terminated the agreement with EDS and hired CTS to perform the same services. The dispute between EDS and SNC regarding the ownership of the products and documentation not at issue; there is nothing in the Complaint that provides facts from which the Court could infer CTS knew or should have known that it had misappropriated trade secrets. Motion to dismiss granted.

938. **VETERAN MEDICAL PRODUCTS, INC. v. BIONIX DEVELOPMENT CORP.**, 2008 U.S. Dist. LEXIS 19468 (W.D. Mich. 2008).

The execution of the NDA and confidentiality notice on the emails constitute reasonable efforts to maintain the secrecy of its business plan for plastic ear currettes; circumstantial evidence may be used to establish trade secret misappropriation under UTSA.

939. **GWR MEDICAL, INC. v. BAEZ**, 2008 U.S. Dist. LEXIS 19629 (E.D. Pa. 2008).

A CD-Rom is not a "computer" for purposes of the CFAA.