USA – DELAWARE

Trends and Developments

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Delaware's Growing Role as a Forum for Trade Secret Disputes

Delaware continues to serve as a leading forum for complex commercial disputes, and trade secret litigation is no exception. In recent years, trade secret filings in Delaware have increased across both state and federal courts, with annual filings doubling in both venues over the past decade. That growth outpaces broader national trends, suggesting that Delaware is playing an increasingly prominent role in trade secret disputes.

This trend reflects not only broader changes in how companies protect proprietary information, but also Delaware's ability to accommodate those disputes quickly and efficiently. As trade secret claims have become more central to business litigation, particularly considering increased scrutiny of restrictive covenants and the availability of federal claims under the Defend Trade Secrets Act, Delaware's established courts have become a natural forum for resolving them.

Delaware's appeal as a forum for trade secret disputes stems from the flexibility of its court system in addressing different types of claims and remedies. The Court of Chancery offers a path to expedited equitable relief, making it attractive in cases involving threatened or ongoing misappropriation. The Complex Commercial Litigation Division of the Superior Court provides a specialised forum for damages claims. And federal courts in Delaware allow parties to bring trade secret claims under the Defend Trade Secrets Act alongside related state law claims, enabling overlapping issues to be resolved in a single proceeding rather than across multiple courts.

Equally important is the depth of judicial experience in handling complex business disputes. Delaware judges, particularly in the Court of Chancery, regularly address issues involving employee mobility, restrictive covenants, and proprietary information. That experience contributes to a high degree of predictability, enabling parties to assess litigation risk more confidently when deciding where to file.

In contrast to jurisdictions where expedited relief may be less predictable or commercial dockets less specialised, Delaware offers a combination of speed, expertise, and procedural flexibility that is especially well-suited to trade secret disputes.

Erosion of Restrictive Covenants and the Rise of Trade Secret Claims

The increase in trade secret litigation is tied to broader developments in the law governing restrictive covenants. Courts across the country have shown increasing reluctance to enforce broad non-compete and similar agreements that are not narrowly tailored to protect legitimate business interests. In Delaware, that scrutiny has, in some instances, resulted in courts declining to enforce restrictive covenants altogether or limiting their scope.

From a practical perspective, this has changed how businesses approach the protection of their proprietary information. Employers can no longer assume that a restrictive covenant will prevent a former employee from joining a competitor. Instead, they must be prepared to rely on trade secret law to protect the information that gives them a competitive advantage.

As a result, trade secret claims are now frequently at the centre of disputes involving departing employees. In many cases, those claims are asserted alongside breach of contract claims based on restrictive covenants. See, eg, *Arxada Holdings NA Inc. v Harvey*, 351 A.3d 519 (Del. Ch. 2026) (suit for breach of restrictive covenants and misappropriation of trade secrets against former employee);*Imagine Grp., LLC v Biscanti*, No CV 25-1137-RGA, 2025 WL 3268486 (D. Del. 24 Nov 2025) (same). This "belt and braces" approach reflects a recognition that even where a restrictive covenant exists, its enforceability is not guaranteed. *Imagine Grp., LLC v Biscanti*, No CV 25-1137-RGA, 2025 WL 3268486 at *3-5 (D. Del. 24 Nov 2025) (dismissing restrictive covenant claim for failure of consideration but retaining trade secret claim). Trade secret claims provide an additional basis for relief when there is evidence that the employee had access to sensitive information and may use that information in a competing role.

The Defend Trade Secrets Act has also driven greater reliance on trade secret causes of action. By creating a uniform federal claim and allowing plaintiffs to sue

directly in federal court, the statute has made trade secret litigation more available and, in many matters, more appealing to plaintiffs.

Key Considerations in Litigating Trade Secret Claims in Delaware

As trade secret claims have become more common, Delaware courts have imposed increasingly rigorous requirements at the pleading and early litigation stages. Practitioners should expect scrutiny of how trade secrets are defined, how they are protected, and how alleged harm is articulated.

Pleading Trade Secrets with Specificity

One of the most significant developments is the requirement that plaintiffs identify their alleged trade secrets with sufficient specificity. It is no longer sufficient to rely on generalised descriptions of "confidential" or "proprietary" information. Courts expect plaintiffs to articulate what the trade secret is in a way that distinguishes it from general business information or publicly available knowledge.

Recent decisions, including *JPMorgan Chase Bank, N.A. v Argus Information & Advisory Services Inc.* and *California Safe Soil, LLC v KDC Agribusiness, LLC*, reflect this approach. In *California Safe Soil*, the Delaware Court of Chancery found that the plaintiff met the specificity requirement because (i) it identified the trade secrets in the licence agreement that gave defendant access to such trade secrets by defining "trade secrets" therein and including an exhibit with a "nonexhaustive list of purported trade secrets", and (ii) it adequately identified the trade secrets in its trade secret disclosures and amended complaint, and subsequently amended the disclosures, where necessary. *California Safe Soil, LLC v KDC Agribusiness, LLC*, No 2021-0498-MTZ, 2025 WL 98479, at *18 (Del. Ch. 10 Jan 2025).

Delaware courts emphasise the need to distinguish trade secrets from general business information and to define them with sufficient precision to permit meaningful evaluation of the claim. Where descriptions were too broad, courts were willing to dismiss or narrow the claims, while more carefully defined trade secrets were more likely to proceed. Delaware federal courts have also addressed the limits of trade secret claims at the pleading stage. In *Fair Isaac Corp. v Gurobi Optimization, LLC*, the court dismissed a misappropriation claim and rejected reliance on a theory of "inevitable disclosure" as a basis for injunctive relief under the Defend Trade Secrets Act. 2025 WL 2636403 (D. Del. 12 Sept 2025).

For practitioners, this creates a practical challenge. On one hand, the complaint must be specific enough to survive a motion to dismiss. On the other hand, the plaintiff must avoid disclosing the very information it seeks to protect. Navigating that tension requires careful planning before a complaint is filed, including identifying the trade secrets at issue and determining how they can be described without unnecessary disclosure.

Managing Confidential Information in Litigation

Delaware courts have also developed procedures to address the handling of confidential information in litigation. These include the use of multi-tier protective orders and rules governing the filing of materials under seal. Practitioners should be prepared to justify confidentiality designations and to work within structured protocols governing access to sensitive materials.

Remedies and Damages Considerations

In addition to pleading requirements, courts have addressed issues relating to remedies and damages in trade secret cases. See *McLaren v Smash Franchise Partners, LLC*, 319 A.3d 909 (Del. 2024) (affirming final judgment and denial of attorneys' fees under DUTSA);*Fair Isaac Corp. v Gurobi Optimization, LLC*, No CV 25-00194-RGA, 2025 WL 2636403 (D. Del. 12 Sept 2025) (granting motion to dismiss, considering when injunctive relief is appropriate under DTSA). Plaintiffs often seek injunctive relief to prevent the continued use or disclosure of trade secrets, particularly in cases involving employee mobility. Courts must evaluate whether such relief is appropriate and, if so, the scope of any injunction.

Recent decisions described below, including *Arxada Holdings NA Inc. v Harvey* and the Delaware Court of Chancery's decision in *California Safe Soil*, provide guidance on how courts approach these issues, including the types of monetary and equitable relief

that may be available, such as damages, unjust enrichment, ongoing royalties, and injunctive relief.

Courts have focused on the relationship between the alleged misappropriation and the claimed harm, requiring plaintiffs to articulate a clear theory of damages. Courts have also addressed the extent to which common law claims may be preempted by the Delaware Uniform Trade Secrets Act, requiring plaintiffs to distinguish trade secret claims from overlapping tort theories based on the same alleged conduct. See *California Safe Soil, LLC v KDC Agribusiness, LLC*, No 2021-0498-MTZ, 2025 WL 98479, at *24-25 (Del. Ch. 10 Jan 2025) (dismissing common law misappropriation, conspiracy, fraud, and unjust enrichment claims which were "coterminous with the statutory misappropriation claim", and/or were grounded in the same facts as the statutory misappropriation claim).

Demonstrating Reasonable Efforts to Maintain Secrecy

Courts evaluating trade secret claims also routinely consider whether the information at issue was subject to reasonable efforts to maintain its secrecy. See, eg, *Biohaven Therapeutics Ltd. v Avilar Therapeutics, Inc.*, No CV 23-328-JLH-CJB, 2025 WL 2443517, at *12 (D. Del. 1 May 2025);*JPMorgan Chase Bank, Nat'l Ass'n v Argus Info. & Advisory Servs. Inc.*, 765 F. Supp. 3d 367, 375 (D. Del. 2025); *Arxada Holdings NA Inc. v Harvey*, 351 A.3d 519, 556-57 (Del. Ch. 2026). As a result, companies are increasingly investing in internal safeguards, including confidentiality agreements, access controls, and employee training.

Practitioners should expect courts to closely examine these measures and should be prepared to demonstrate, at the outset, the specific steps taken to protect proprietary information. In *Arxada*, for example, the Court of Chancery looked favourably on the following efforts taken by plaintiff, calling them "comprehensive and consistent with industry standards": "employee training, access restrictions, a secure IT environment, shredding of documents after use, keycard-controlled gates, and a ban on on-site photography", as well as keeping its spreadsheets and formulas in its restricted-access Chempax system". *Arxada Holdings NA Inc. v Harvey*, 351 A.3d 519, 557 (Del. Ch. 2026). The absence of such protections can be fatal to a claim, regardless of whether the information would otherwise be considered proprietary.

Recent Developments

Four recent cases provide guidance to practitioners in Delaware.

California Safe Soil, LLC v KDC Agribusiness, LLC, No 2021-0498-MTZ, 2025 WL 98479 (Del. Ch. 10 Jan 2025)

In *California Safe Soil*, the Delaware Court of Chancery considered whether plaintiff's alleged "combination" or "compilation" trade secret was misappropriated by defendant under both the federal Defend Trade Secrets Act and the Delaware Uniform Trade Secrets Act. The parties had previously agreed to a licence agreement for liquid fertiliser, animal feed and blends created by facilities using plaintiff's proprietary aerobic, enzymatic digestion process. Id. at *4. However, defendant used the information it gained from plaintiff to secure financing for its planned expansion into the market, and after the licence agreement terminated, defendant continued to create and sell blends made using plaintiff's processes. Id. at *8-10. Plaintiff asserted DTSA, DUTSA, tortious interference with contract, common law misappropriation, conspiracy, fraud, and unjust enrichment claims against defendant.

The Court found that the plaintiff's common law misappropriation, conspiracy, fraud, and unjust enrichment claims were pre-empted because they were "coterminous with the statutory misappropriation claim", and/or were grounded in the same facts as the statutory misappropriation claim. Id. at *24-25. The court found that plaintiff's process constituted a trade secret, was described with specificity, that defendant misappropriated the trade secret, and so awarded damages and a limited injunction. However, the court did not find that plaintiff proved its tortious interference with contract claim, as that claim was premised on defendant's directors acting outside of their positions as officers and directors of the defendant when they terminated the licence agreement. Id. at *25-26.

The court awarded running royalties and milestone payments under the licence agreement and a limited injunction. Although the plaintiff requested royalties of over USD40 million, the Court only awarded

USD875,000 plus certain milestone payments. Id. at 32. The court held that the USD40 million royalties were unreasonable because they were untethered from the licence agreement which the parties had previously agreed to, and they contemplated an exclusive licence, even though plaintiff had not secured any exclusive licences, including the licence agreement. Id. at 33. Although plaintiff requested injunctive relief requiring the defendant to "return or destroy all documents containing CSS information and be enjoined from using such information... [or] any development, marketing, commercialization, sales efforts, or any other activity in food recycling, fertilizer, pet food, animal feed business, or any related business", the court only granted a narrow injunction enjoining defendants "from the use of the CSS Process or any other confidential information the Defendants obtained from CSS" and required that they "return or destroy all information related to the CSS Process". Id. at 34-35.

The court reasoned that limiting defendants' "ability to develop, market, commercialise or conduct any other activity in food recycling and its related businesses is too broad". Id. at 35. The court declined to grant exemplary damages or attorneys' fees because plaintiff failed to establish that the misappropriation was wilful or malicious, and defendants' litigation conduct did not rise to the level of bad faith, although it was "oppressive and defensive" and "succeeded in delaying the day of reckoning, and culminated in trial testimony rife with impeachments and untruths". Id. at 35-36.

On two separate appeals, the Delaware Supreme Court affirmed the Court of Chancery's ruling.

Arxada Holdings NA Inc. v Harvey, No 2024-0771-JTL, 2026 WL 220511, __ A. 3d__ (Del. Ch. 28 Jan 2026)

In *Arxada*, the Court of Chancery considered whether, after selling his business and agreeing to certain restrictive covenants, the former founder's and his sons' use of the Company's trade secrets and other acts violate the restrictive covenants, violate the DUTSA, breach their fiduciary duties, or constitute tortious interference. The court found that the plaintiff's formulas, business information, product labels, data sheets, and photographs of company sites constituted trade secrets and that defendants misappropriated such trade secrets. The court also awarded damages for plaintiff's actual loss, defendant's unjust enrichment, plus exemplary damages and attorneys' fees under the DUTSA. Id. at 559-563.

Because the plaintiff's expert did not calculate lost profits, the court awarded the amount of lost profits that defendant's expert calculated. Id. at 560. For unjust enrichment, the court credited plaintiff's witnesses' testimony about the "extensive work that would be needed to recreate the formulas", and the "conservative" estimates that the plaintiff's expert made when calculating the costs that defendant saved by not developing the trade secret itself. Id. The court declined to award royalty-based damages because the trade secrets that the defendants misappropriated were essentially the "company in a box" and there were "too many variables" at play, and the other methods were more reliable. Id. at 561-62.

The court granted exemplary damages and expenses, finding that plaintiff proved wilfulness under the DUTSA because defendants' misappropriation was knowing – they had treated the trade secrets as such for years, and had just sold the trade secrets along with the company – and malicious – one defendant referred to plaintiff as "a circus", "the evil empire", a "scumbag company", "a-holes", "a bunch of clowns", "[b]ozos", "brain-dead", and "dumbasses", and encouraged the Company's customers to switch to competitors while he was still employed at the Company. Id. at 562-63. Although the case "could warrant a maximum amount", the court only "impose[d] the same amount awarded for compensatory damages", bringing the total damages to 11% of the Company's purchase price. Id. at 563.

Fair Isaac Corp. v Gurobi Optimization, LLC, No CV 25-00194-RGA, 2025 WL 2636403 (D. Del. 12 Sept 2025)

In Fair Isaac, the plaintiff sued its former employee's (Dr Bastert) new employer, Gurobi, claiming that under the inevitable disclosure doctrine, Gurobi had, or was about to, violate the DTSA based on Dr Bastert's knowledge of plaintiff's trade secrets. Defendant moved to dismiss on multiple grounds, and the Delaware District Court granted the motion, finding

that because plaintiff was only requesting an injunction, it failed to state a claim for violation of the DTSA because "[t]he DTSA does not allow for injunctions to prevent a person from entering into an employment relationship and requires that conditions placed on such employment be based on evidence of threatened misappropriation and not merely on the information the person knows". Id. at *6 (cleaned up). Because plaintiff's DTSA claim was its only federal claim, the District Court further found that it did not have jurisdiction over the state law claims and dismissed them without prejudice. Id at *7. This appears to have been the first case in Delaware to consider whether the inevitable disclosure doctrine can support a trade secret claim.

JPMorgan Chase Bank, Nat'l Ass'n v Argus Info. & Advisory Servs. Inc., 765 F. Supp. 3d 367 (D. Del. 2025)

In *JP Morgan*, plaintiff sued defendants Argus and its parent companies Verisk and TransUnion for trade secret misappropriation under both the DTSA and DUTSA. Argus, a third-party intermediary between banks and regulators, had allegedly been taking data that JP Morgan was sending to federal regulars and using it for benchmarking studies that JP Morgan had explicitly opted out of. Id. at 373. Defendants moved to dismiss, challenging standing and arguing that JP Morgan had failed to state a claim. After deciding that JP Morgan had standing, the Court denied the motion to dismiss as to the federal DTSA claim but granted it as to the state DUTSA claim. Id. at 376-81. Looking at the DTSA, the court found that JP Morgan stated a claim because it successfully alleged a trade secret, that it created such trade secret from interstate data and used it nationally, and because it alleged that defendant misappropriated such data. Id. at 375.

On the last point, defendants claimed that because the contracts Argus had with the regulators "created a duty to the government not to misuse the data, they insist JPMorgan must show that Argus owed it a duty". Id. However, the court dispelled this interpretation, clarifying that "[i]t is enough if the defendant had "a duty to maintain the secrecy of the trade secret or limit [its] use". 18 U.S.C. § 1839 (5)(B)(ii)(II) (emphasis added). That duty need not have been owed to the plaintiff. I will not add words to the statute that Congress chose not to". Id. The court also found that JP Morgan had the right to sue under the DTSA, as it was the trade secret's owner, and Argus's contracts with federal regulators did not give Argus any rights in JP Morgan's data or trade secrets beyond merely conveying them to regulators. Id. at 376-77.

The court also denied the motion to dismiss as to defendants Verisk and TransUnion, finding that JP Morgan plausibly alleged their misappropriation of the trade secrets, although the misappropriation claim against TransUnion was "thin". Id. at 381-82.

As to the DUTSA claim, the court found that JP Morgan failed to allege that any misappropriation happened in Delaware, which is fatal to any DUTSA claim. "Delaware courts do not apply the Delaware Act when the misappropriation happened in another state". Id. at 380. The court dismissed the state DUTSA claim with leave to amend "to add a claim under a state law that reaches defendants' conduct or to allege facts to which the Delaware Act would apply". Id. at 381.

Looking Ahead: Emerging Issues in Trade Secret Protection

Emerging technologies are likely to present new challenges for trade secret protection. In particular, the increasing use of artificial intelligence raises questions that courts have not yet fully addressed.

AI and trade secret risk

Businesses are already facing situations where employees use AI tools in ways that may create trade secret risks. For example, an employee might input proprietary information – such as source code or product specifications – into a generative AI platform to generate insights, troubleshoot an issue, or streamline a task, without considering whether that information may be retained or used in a way that undermines its confidentiality. If the platform learns from or retains that input, the company may lose control over whether the information remains confidential.

Whether such conduct results in the loss of trade secret protection is an open question. Courts have not yet squarely addressed how the use of AI tools affects the requirement that a trade secret be subject to reasonable efforts to maintain its secrecy. However,

this issue is likely to become more prominent as the use of such tools continues to expand.

Future considerations for businesses

In the absence of clear guidance from courts, businesses should consider adopting policies governing the use of AI tools, including restrictions on the types of information that may be input and oversight of how such tools are used within the organisation. These issues are likely to become more prominent in the coming years and to play an increasingly significant role in how trade secret law is applied.