

The Illinois Trade Secrets Act— Protectable Information by Joette S. Doran, Esq.

Illinois provides protection for the wrongful use of confidential information under the Illinois Trade Secrets Act. A trade secret is generally defined as information that is sufficiently secret to derive economic value from not being generally known to other persons who can obtain economic value from its use or disclosure. In determining whether a trade secret exists, the court considers the extent to which measures are taken to keep the information confidential, whether the information is known by employees and others involved in the business, the value of the information to the employer and its competitors, the amount of money expended by the employer in developing the information and the ease or difficulty with which the information could be properly acquired or duplicated by others. Accordingly, in order for information to qualify as a trade secret under the Act, the information must meet two requirements: first, the information must be sufficiently secret to give the plaintiff a competitive advantage, and second, the information must be subjected to affirmative measures to prevent others from acquiring or using it.

Recently, an Illinois Appellate Court examined whether former employees violated the Act. In that case, the former employer furnished computer network services to businesses, and the former employees had worked for the employer as computer technicians. After leaving the employer, the employees formed their own business that provided computer network services. The employer filed a lawsuit, claiming that the employees violated the Act by misappropriating its customer list, manuals, marketing plans, and knowledge of its customers' computer systems and system requirements. The trial court awarded an injunction and damages based on a finding that the customer list and information about the customers' computer systems and networks were protectable trade secrets under the Act. On appeal, the court reversed. The Appellate Court found that the former employer's customer list was not sufficiently secret under the Act to constitute a trade secret because the list could be readily



duplicated simply by looking at the telephone directories or other public information. The court noted that in today's modern world, computers and computer networks are common business tools, and all businesses are potential customers of computer network services. Locating potential customers is merely a matter of identifying businesses in a particular town, county, or area and looking up their contact information. This information is easily obtained from telephone directories, chamber of commerce directories, the Internet, and a variety of other sources. Where customer information is readily available to competitors through normal competitive means, no protectable interest exists. A trade secret must be something kept from the general public and not susceptible to common knowledge. This case illustrates that determining whether a violation of the Act exists requires a careful factual and legal analysis of the situation.

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This article is not intended as legal advice. You should consult with an attorney for individual advice regarding your own situation.

Ms. Doran is licensed in Illinois, admitted to all Illinois federal courts and the U.S. Supreme Court. She is a member of the Federal Trial Bar and is the past chairperson of the Employment Law Committee for the Northwest Suburban Bar Association, a past president of Barrington Area Professional Women, and a member of the National Employment Lawyers Association.