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PRACTICE GUIDE · BUSINESS TORTS

Trade Secret Misappropriation

Grand Park Law Group · 2026



A. **The California Uniform Trade Secrets Act (CUTSA)**

CUTSA, codified at Civil Code section 3426 et seq., is California's exclusive civil remedy for trade-secret misappropriation. Section 3426.1(d) defines a "trade secret" as information that "(1) [d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy." "Misappropriation" under section 3426.1(b) covers acquisition by improper means, disclosure or use without consent, and use after notice.

B. **The Defend Trade Secrets Act (18 U.S.C. § 1836)**

The federal Defend Trade Secrets Act, 18 U.S.C. § 1836, enacted in 2016, creates a parallel federal cause of action for misappropriation of trade secrets "related to a product or service used in, or intended for use in, interstate or foreign commerce." 18 U.S.C. § 1836(b)(1). DTSA largely mirrors CUTSA but differs in important ways: (i) it permits ex parte civil seizure of property to prevent dissemination of stolen trade secrets, § 1836(b)(2); (ii) it requires whistleblower-immunity notice in employee/contractor agreements, § 1833(b); and (iii) it provides federal-court jurisdiction without diversity. Plaintiffs typically plead CUTSA and DTSA in the alternative.

C. **CUTSA Preemption (K.C. Multimedia)**

CUTSA preempts most common-law tort claims based on the same nucleus of facts as a trade-secret claim. In *K.C. Multimedia, Inc. v. Bank of America Tech. & Operations, Inc.* (2009) 171 Cal.App.4th 939, the Court of Appeal held that CUTSA "occupies the field" in California and bars common-law claims — including breach of confidence, conversion, unfair competition, and

interference — to the extent they are premised on the misappropriation of a trade secret. *Id.* at 954–62. Civil Code section 3426.7(b) preserves only contract claims and "other civil remedies that are not based upon misappropriation of a trade secret."

The practical consequence is that pleading "kitchen sink" complaints — adding conversion, IIPEA, and UCL claims to a CUTSA claim — typically results in those collateral claims being stricken or dismissed unless the plaintiff can identify factually distinct wrongdoing apart from misappropriation (for example, breach of a fiduciary duty independent of confidential information, or theft of physical property unrelated to trade secrets).

D. **The Rejection of Inevitable Disclosure (Whyte v. Schlage)**

The "inevitable disclosure" doctrine — under which courts in some states enjoin a former employee from working for a competitor on the theory that the employee will inevitably disclose or use the former employer's trade secrets — has been firmly rejected in California. In *Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443, the Court of Appeal held that adopting inevitable disclosure would amount to a judicially created non-compete agreement in conflict with Business and Professions Code section 16600's general prohibition on restraints of trade. *Id.* at 1462–63. *Whyte* requires plaintiffs to demonstrate actual or threatened misappropriation through affirmative conduct, not mere employment with a competitor.

This principle was reinforced in *AMN Healthcare, Inc. v. Aya Healthcare Servs., Inc.* (2018) 28 Cal.App.5th 923, in which the Court of Appeal invalidated a non-solicitation-of-employees clause as a restraint on former employees' ability to engage in their lawful profession. *Id.* at 938–40. *AMN* signals an even stricter California approach: post-employment restrictive covenants and trade-secret theories that operate as backdoor non-competes face heightened skepticism.

E. **Remedies — Damages, Royalties, Exemplary, Injunctive**

CUTSA remedies are set out in Civil Code section 3426.3. A plaintiff may recover: (i) actual damages (lost profits, diminution in value); (ii) the defendant's unjust enrichment to the extent not duplicated by actual damages; or (iii) in lieu of either, a reasonable royalty for the period of unauthorized use. § 3426.3(a)–(b). For "willful and malicious" misappropriation, the court may award exemplary damages "in an amount not exceeding twice" any compensatory award, § 3426.3(c), and reasonable attorney's fees, § 3426.4. Injunctive relief is available under section 3426.2 to prevent actual or threatened misappropriation, including "head-start" injunctions limited to the time the defendant would have needed to develop the secret independently.

Practice	Business Torts
Topics	Trade Secrets · CUTSA · DTSA · Damages
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