

What Makes Information Trade Secret?

© 2009 Don V. . Kelly

Let's look at the formal definition of a trade secret employed by most states.

Most states, including Missouri and Illinois have adopted the Uniform Trade Secret Act ("UTSA") which defines trade secrets as information, including but not limited to technical data, formulae, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, or lists of actual or potential customers or suppliers that:

- i. Is sufficiently secret to derive economic value, actual or potential, from not being generally known to other persons who can obtain economic value from its disclosure or use; and
- ii. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality.

There are six factors that courts often examine to determine whether certain information is a trade secret:

- (1) the extent to which the information is known outside of the employer's business;
- (2) the extent to which it is known by employees and others involved in the business;
- (3) the extent of measures taken by the employer to guard the secrecy of the information;
- (4) the value of the information to the employer and to his competitors;
- (5) the amount of effort or money expended by the employer in developing the information; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Don V. Kelly
Evans & Dixon, LLC
Suite 2500
211 North Broadway
St. Louis, Missouri 63102
dkelly@evans-dixon.com