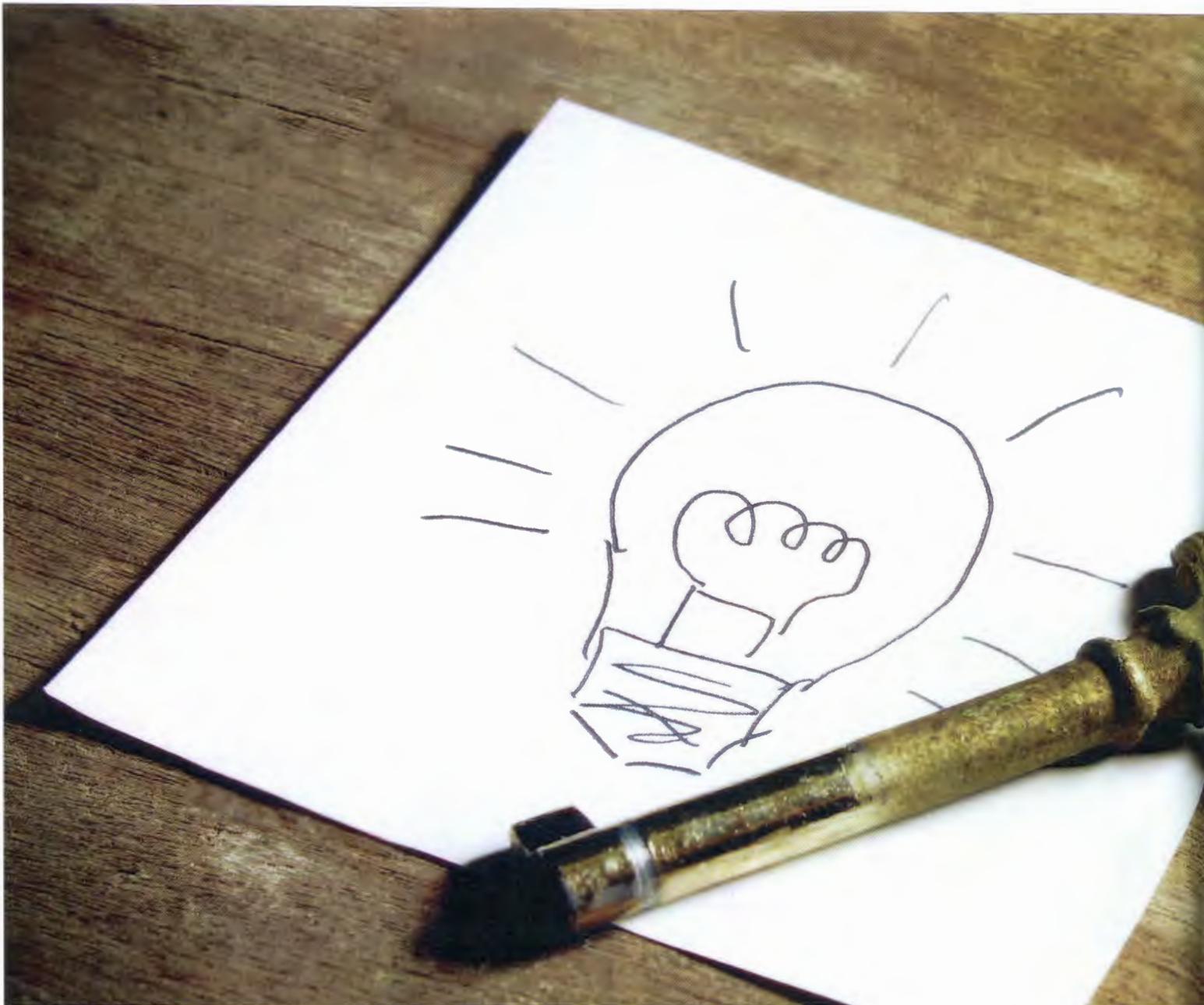


Analyzing a Trade Secret Case in Kansas

Marvelous Manufacturer and the Capable Chemist

By Tony Rupp and Jeff Hurt



I. Introduction

Marvelous Manufacturer is a Kansas chemical company that sells proven products based on formulas that have been part of Marvelous' business for years. Karen has been a capable chemist for Marvelous for three years. She has access to the formulas and has modified and improved some of them. She knows some of the formulas from memory. She has signed a "confidentiality" agreement forbidding disclosure of Marvelous' formulas to third parties without permission. However, she has not signed a noncompetition agreement.

In a pitiful economy, poor Karen has not had a pay raise. Fearsome Competitor is looking for a competent chemist to upgrade its formulas to compete with Marvelous. Fearsome pays better than Marvelous, and Karen sees this as a tremendous opportunity to advance her career and pursue her livelihood. She applies for and accepts a position with Fearsome.

Management at Marvelous is miffed. Marvelous suspects Karen to have pilfered copies of the formulas. Even if she hasn't, Marvelous is alarmed that the knowledge she has of those formulas is potentially damaging and gives Fearsome an unfair advantage in the marketplace.

Marvelous comes to Lucky Lawyer for guidance. Lucky is mindful of the Kansas Uniform Trade Secrets Act (KUTSA)¹ and knows that he needs to determine whether there is a potential claim for misappropriation of a trade secret. Lucky recognizes the tug-of-war between Marvelous' interest in maintaining the secrecy of information that may be the subject of extensive investment and that "loses its value when published to the world at large,"² and Karen's interest in pursuing her livelihood.³ Lucky determines that a crucial question is whether a "trade secret" has been "misappropriated" by Karen.

II. What is a "Trade Secret?"

Lucky knows "trade secret" is a term of art that is often incorrectly used to describe any information a party wants to keep confidential. While at a minimum, a "trade secret" must be treated confidentially by the party claiming statutory protection, such confidential treatment isn't enough. There are other

requirements. What is and is not a trade secret requires a fact-intensive analysis of the factors set forth in the KUTSA as construed by the courts. However, the plaintiff must come forward with "some showing that the information alleged to be a trade secret meets the definition."⁴ Accordingly, if Marvelous is to pursue a claim it is critical for Lucky to assemble evidence that establishes that there are actual trade secrets that have been taken.

Under K.S.A. 60-3320(4), trade secret protection may apply to a formula, pattern, compilation, program, device, method, technique, or process that:

- i. derives independent economic value, actual or potential, from not being generally known to, and not being reasonably ascertainable by proper means by, 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.

In *Progressive Products Inc. v. Swartz*,⁵ the court said that the KUTSA operates in conjunction with patent law "to protect developers and legitimate users of new commercial ideas and technology. A key difference between a trade secret and a patent is that the latter is open to public inspection, while the former is maintained in secrecy."⁶ The court went on to state,

[T]rade secret law creates a property right that is defined by the extent to which the owner of the secret protects that interest from disclosure to others. In doing so, the law allows a trade secret owner to reap the fruits of its labor and protects the owner's moral entitlement to these fruits. Trade secret law encourages the development and exploitation of lesser or different inventions that might be accorded protection under the patent laws, but which still play an important part in technological and scientific advancement. Without trade secret protection, organized scientific and technological research could become fragmented, and society as a whole could suffer. By restricting



the acquisition, use, and disclosure of another's valuable, proprietary information by improper means, trade secret law minimizes the inevitable cost to the basic decency of society when one steals from another, in doing so, trade secret law recognizes the importance of good faith and honest, fair dealing in the commercial world.⁷

If Marvelous is going to pursue a trade secret claim, Lucky must identify with specificity what trade secrets have been misappropriated.⁸ A common misperception is that all "confidential" information is "trade secret" information. It is not. KUTSA does not protect information that is merely confidential. To be entitled to KUTSA protection, the information must go beyond merely being confidential, and must meet the statutory definition of "trade secret."

In *Wolfe Electric Inc. v. Duckworth*,⁹ the court deemed jury instructions to be erroneous when those instructions allowed for the recovery of damages under KUTSA when the instructions grouped "trade secrets and confidential information" together. The court stated:

We begin our analysis by agreeing with defendants that KUTSA only prohibits misappropriation of 'trade secrets.' It does not mention 'confidential information.' Accordingly, remedies concerning non-trade secrets, e.g., mere confidential information, cannot be obtained through a KUTSA cause of action.

There are a few general conclusions that can be fairly drawn from the KUTSA cases.

A. Specificity

It is not good enough for a plaintiff to "simply persist in the blunderbuss statement that 'Everything you got from us was a trade secret.'"¹⁰ Lucky needs to determine specifically what Marvelous believes Karen took with her. Simply pleading the statutory language is not sufficient to avoid summary judgment in a trade secrets case.¹¹ The plaintiff has the burden to "define its trade secrets with the precision and particularity necessary to separate it from the general skill and knowledge possessed by others."¹² Like the plaintiff in *Paradigm*, Lucky can likely satisfy this requirement by identifying Marvelous' chemical processes by name and listing the specific task completed by each process. He is not required to disclose any of the details of the processes themselves.¹³

B. Customers and Customer Lists

Customers themselves are not trade secrets.¹⁴ Customer lists are not trade secrets when they contain public information that could be easily compiled by third parties. However, when the customer list, while using public information as a source, is the result of a great deal of time, effort, and expense and is treated as confidential information, it may be entitled to trade secret protection.¹⁵ Whether a customer list is a trade secret is a fact-intensive inquiry which is highly dependent upon the contents of the list.¹⁶

C. Duty to Maintain Secrecy

"Kansas law does not require the holder of a trade secret to maintain its complete secrecy. Rather, Kansas law requires merely that the holder of a trade secret exercise reasonable efforts under the circumstances to maintain its secrecy."¹⁷ Cer-

tainly, keeping confidential information under lock and key may be reasonable under the circumstances, but one not need establish the multiple layers of protection presumably used to protect the formula to Coca-Cola. Reasonable efforts may include: prohibiting disclosure of one's confidential information by business partners through non-disclosure agreements,¹⁸ requiring employees to sign confidentiality agreements applicable to the subject information,¹⁹ limiting internal use and disclosure to certain employees,²⁰ limiting the internal and external distribution or access to print or electronic copies of confidential information,²¹ and taking steps to prevent business invitees from observing confidential components and processes.²²

Lucky should find the *Progressive* case instructive in this regard. *Progressive's* principals had, over many years and at significant expense, developed a ceramic coating product for use with metal pneumatic tube systems that proved far superior to competing products. Deciding not to pursue patent protection because of the limited period such protection affords, *Progressive's* principals instead decided to keep confidential its product's constituents and order of mixing, through various means. The defendants were made privy to both through their former job duties. When they left *Progressive* to start a competing company they began to manufacture and sell a nearly identical coating product using *Progressive's* mixing procedure to prepare it. *Progressive* sued, alleging, among other claims, that the defendants misappropriated three trade secrets: the formula and mixing process for the ceramic coating, computerized customer lists, and a computerized pricing program. After a bench trial, the district court granted injunctive relief and otherwise found in favor of the plaintiff without clearly articulating which of the three trade secrets it considered misappropriated. On appeal the defendants argued that *Progressive* had not treated the purported trade secrets confidentially. The Court of Appeals affirmed in part and reversed in part.²³

The Supreme Court upheld the Court of Appeals in all respects. It first held that there was sufficient record evidence to support the finding that the coating formula was treated confidentially and was a protected trade secret. The plaintiff's president testified he told employees the formula was confidential. Sales personnel were instructed not to give the coating's material safety data sheet to customers or potential customers. Production personnel were instructed to conceal from visitors to the plant the key ingredients of the formula when mixing the coating, especially a proprietary thickener. Although there was some evidence that the measures taken were loose and not uniformly enforced, the evidence was the formula was treated sufficiently to warrant trade secret protection. The defendants admitted they did not reverse-engineer the formula and that they based their formula on what they had learned from *Progressive*. The defendants had substituted another ingredient for *Progressive's* proprietary thickener, but otherwise the formula was identical. The Court held *Progressive's* formula to be a trade secret, one that provided the defendants with the necessary information for producing their own coating to compete without having to make any significant investment in experimentation and research as had *Progressive*.²⁴

The Court also found the computerized pricing program to be a trade secret. The computer program developed by Progressive allowed it to easily calculate the amount of compound to make up and the cost of that batch. The program was a simple spreadsheet for generating numeric results using a simple mathematical calculation to determine the amount of pipe to be covered and the number of coats needed. Nonetheless, the Court found the program to be a trade secret because it was developed by Progressive for its sole use to calculate production amounts based on its secret formula. The program was also password protected to limit its disclosure to only those employees who needed to know it to perform their jobs.²⁵

The Court disagreed that the mixing process and computerized customer lists were trade secrets. The evidence showed that the mixing process was not treated confidentially; it was carried out in the open and there were no steps taken to shield the marked mixing containers from public view. Furthermore, employees were not specifically instructed that the mixing process was confidential. The computerized customer lists, which contained product prices, were not treated confidentially by Progressive because it gave them to its customers, who, in turn, were free to communicate with one another about how much they were paying Progressive for its product.²⁶

Lucky needs to determine what reasonable efforts Marvelous took to preserve the confidential nature of the formulas it believes Karen took with her. Lucky should ask, among other things, who within the company had access to the formulas, the format(s) in which the formulas were maintained, whether access to the formulas was limited, and how. He should also determine how Marvelous kept the formulas from being disclosed to outsiders. Were employees told the formulas were confidential? Lucky should confirm that Marvelous informed Karen that the formulas were considered confidential and not to disclose them to outsiders.²⁷ That Marvelous had Karen sign a confidentiality agreement, presumably applicable to the subject formulas, is a positive factor, but only marginally so if she was the only employee required to do so.²⁸ Furthermore, the employer needs to let the employees know what is confidential before the alleged misappropriation. Where an employer had no noncompetition or confidentiality agreements with its employees, its “after-the-fact” attempt to inform them that nearly everything they learned as a result of their employment was a trade secret was deemed insufficient.²⁹

D. Other

A person’s strengths and weaknesses are not company trade secrets but rather subjective general skills belonging to the employee.³⁰ Unlike product price, profit margin in a competitive marketplace can be valuable information. Profit margin, overhead and labor are not information readily ascertainable by the industry.³¹

III. Has the Defendant “Misappropriated” the Information?

It is not enough that Marvelous maintains trade secrets and that Karen had access to those secrets. Marvelous must establish that Karen “misappropriated” the trade secrets. Per K.S.A. 60-3320(2), “misappropriation” means:

- (i) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
- (ii) disclosure or use of a trade secret of another without express or implied consent by a person who
 - (A) used improper means to acquire knowledge of the trade secret; or
 - (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was
 - (I) derived from or through a person who had utilized improper means to acquire it;
 - (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
 - (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
 - (C) before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

What constitutes misappropriation by “use” is a frequently litigated issue, but Kansas federal courts have declined to stray from the plain meaning of the word. That is, any use of another’s trade secret can constitute misappropriation. In *Evolution Inc. v. Suntrust Bank*,³² the court rejected the argument, based on a case construing the New York version of the UTSA, that the Bank’s use of Evolution’s source code to create a data-extraction program for internal use was not misappropriation because the Bank did not use the source code to compete with the plaintiff. Noting KUTSA’s similarity to New York law, Judge Murguia could not find any competition requirement in the KUTSA, stating: “The court, therefore, relies on a plain reading of the statutory definition of misappropriation, which does not state that the use of a trade secret must be for personal benefit or competition against the trade secret’s owner.”³³ Similarly, in *Paradigm Alliance Inc. v. Celeritas Technologies LLC*,³⁴ the court denied summary judgment in favor of defendant, finding that it had misappropriated Paradigm’s trade secret information through use by simply including the information in the defendant’s application to patent a product, one that would not function as intended without the plaintiff’s trade secrets.

To come within the prohibitions of K.S.A. 60-3320(2)(i) and (ii)(A) and (B), the defendant must have used “improper means” to acquire knowledge. Improper means include “theft, bribery, misrepresentation, breach, or inducement of a duty to maintain secrecy or espionage through electronic or other means.”³⁵ Marvelous told Lucky that Karen stole copies of the formulas which, if true, would constitute “improper means” under the statute.

What if Karen did not “steal” the formulas but rather “reverse engineered” the formula after joining Fearsome? A common question is whether “reverse engineering” of a product is “improper means.” Reverse engineering, by itself, is not

“improper means” for a trade secret violation because simply disassembling the pieces of an item to see what make it work is not “improper means” as defined in the KUTSA.³⁶ Lucky should inquire whether Marvelous’ chemical formulas may be discovered by Karen or others through reverse engineering.

Trade secrets cases often make extensive use of electronic discovery to determine whether a departing employee has copied, emailed, downloaded, or otherwise acted suspiciously with regard to her access to trade secret information.

IV. The Interplay Between KUTSA and Other Remedies

Lucky will need to consider other potential remedies and defenses. KUTSA displaces conflicting tort, restitutionary and other law providing civil remedies for misappropriation of a trade secret.³⁷ However, KUTSA does not affect contractual remedies, whether or not based upon misappropriation of trade secrets, other civil remedies that are not based upon misappropriation of a trade secret, or criminal remedies. Generally speaking, that means that Marvelous may also be able to pursue a claim for breach of contract based on the “confidentiality” agreement Karen signed, but may not pursue an alternative tort theory that arises out of the misappropriation of a trade secret.

Whether a trade secret claim based upon tort is preempted by KUTSA requires statutory interpretation, and is a question of law.³⁸

In *Fireworks Spectacular v. Premier Pyrotechnics Inc.*,³⁹ the court disposed of a state tort law claim in a footnote as follows:

It is also brought ‘pursuant to the *Restatement of Torts* § 757 and based upon their common law right to protection from the misappropriation of trade secrets and unfair competition.’ K.S.A. § 60-3326, however, states that the Uniform Trade Secrets Act ‘displaces conflicting tort, restitutionary and other law of this state providing civil remedies for misappropriation of a trade secret.’

Karen’s breach of the confidentiality agreement is a possible alternative theory for Marvelous. Many of the above cited cases pled a KUTSA violation and breach of a written confidentiality agreement.⁴⁰ Yet, the authors have not located a reported case in which a KUTSA claim failed and the alternative breach of confidentiality agreement was even considered by the court. Unlike some jurisdictions,⁴¹ no Kansas appellate court has specifically recognized a cause of action based on

the breach of an employee confidentiality agreement, whether or not KUTSA is part of the case. There are, however, several unpublished decisions addressing various contract related defenses to claims under such agreements.⁴²

While KUTSA displaces conflicting tort remedies, there are also instances where other remedies may pre-empt KUTSA claims.

There have been several cases in which whether a trade secrets claim is pre-empted by the Copyright Act was an issue. In *Evolution Inc. v. Suntrust Bank*,⁴³ the court granted partial summary judgment to the defendant on the basis that the plaintiff’s Trade Secrets Act claim was pre-empted by the Copyright Act. Federal copyright law will pre-empt state law Trade Secrets Act claims unless plaintiff’s claim requires an “extra element” beyond the rights provided by § 106 of the Copyright Act. In *Gates Rubber v. Bando Chemical Industries, Ltd.*, the Tenth Circuit found no preemption because an “extra element” of breach of a duty of trust was involved.⁴⁴

In *Foresight Resources Corp. v. Pfortmiller*,⁴⁵ the plaintiff brought claims under the Copyright Act and trade secrets law. The court disposed of the trade secrets claim and noted that the claim was based on “precisely the same facts as those underlying plaintiff’s copyright infringement claims.”⁴⁶

It is true that state trade secret law is not necessarily pre-empted by federal copyright law. See *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 40 L. Ed. 2d 315, 94 S. Ct. 1879 (1974). However, granting plaintiff an injunction in this case, based upon the Kansas trade secret law, would have the effect of denying defendant the benefit of [the Copyright Act].⁴⁷

On the other hand, see the unpublished opinion in *Chris-Leef General Agency Inc. v. Rising Star Insurance Inc.*,⁴⁸ holding that a claim under KUTSA is qualitatively different from a claim under the Copyright Act because it requires the “extra element” of improper means.

V. Inevitable Disclosure

Lucky may consider attempting to preclude Karen from serving in her new position with Fearsome under the “inevitable disclosure” doctrine. This doctrine was first adopted in *PepsiCo Inc. v. Redmond*.⁴⁹ There, against a backdrop of competition in the beverage industry, the court precluded the defendant from accepting a high level position with one of PepsiCo’s competitors under the Illinois Trade Secrets Act.

The gist of the inevitable disclosure doctrine is to prevent an employee from taking new employment when an employee’s new employment will inevitably lead her to rely on her former employer’s trade secrets.⁵⁰ The essential elements are:

- (1) The employers must be direct competitors providing the same or very similar products or services;
- (2) The employee’s new position is nearly identical to his old one, such that he could not reasonably be expected to fulfill his new job responsibilities without utilizing the trade secrets of his former employer;
- (3) the trade secrets are highly valuable to both employers.

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Many courts have refused to adopt the inevitable disclosure doctrine.⁵¹ In 2006, Judge Brown noted that Kansas courts have not addressed whether Kansas would adopt the inevitable disclosure doctrine.⁵² There have been no reported Kansas cases discussing this issue since then. A factor that the court may weigh in Karen's favor is that there was no noncompetition agreement negotiated between Karen and Marvelous. If the court determines that Kansas would apply the inevitable disclosure doctrine, the court would need to determine its applicability here. The court would likely weigh whether the inevitable disclosure doctrine is justified to protect Marvelous' chemical formulas in this setting, and whether it gives Marvelous by operation of law a noncompetition agreement that was never negotiated with Karen in the underlying employment.

VI. Injunctive Relief

If Lucky's factual investigation supports a trade secret claim, he will consider whether to seek injunctive relief. K.S.A. 60-3321 provides for injunctive relief to prevent actual or threatened misappropriation of a trade secret. In exceptional circumstances, an injunction may condition future use upon payment of reasonable royalty for no longer than the period of time in which such use could have been prohibited.⁵³

Kansas law provides that an ex-employee may be enjoined from disclosing confidential materials and trade secrets gained in the course of his or her employment.⁵⁴ To obtain injunctive relief, Marvelous must establish: existence of a trade secret used by it in its business or trade; a confidential relationship between Marvelous and Karen; that it made disclosures in confidence to Karen concerning its trade secrets; and an unauthorized use of those disclosures by Karen.⁵⁵

In the *Progressive Products* case, the court stated:

K.S.A. 60-3321(b) allows for relief in the form of a royalty injunction. Such an injunction may lie when the district court finds 'exceptional circumstances'; those circumstances 'include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.'

ENDNOTES

1. K.S.A. 60-3320 *et seq.*
2. *Progressive Prod. Inc. v. Swartz*, 292 Kan. 947, 954, 258 P.3d 969, 976 (2011).
3. "An employee on quitting his employment has the right to engage in business in direct competition with that of his employer, unless he has entered into a contract not to do so." *Garst v. Scott*, 114 Kan. 676, 679, 220 P.277, 278 (1923).
4. *Paradigm Alliance Inc. v. Celeritas Technologies LLC*, 659 F. Supp. 2d 1167, 1185 (D. Kan. 2009).
5. 292 Kan. 947, 258 P.3d 969 (2011).
6. *Id.* at 954.
7. *Id.* at 954-55.
8. *Biocore Inc. v. Khosrowshahi*, 96 F. Supp. 2d 1221, 1229-30 (D. Kan. 2000).
9. 293 Kan. 375, 384-85, 266 P.3d 516, 523 (2011).
10. *Biocore Inc. v. Khosrowshahi*, 96 F. Supp. 2d 1221, 1229, quoting *gad. inc. v. ALN Assoc. Inc.*, 1990 U.S. Dist. LEXIS 7458, 1990 WL 93362 at *2 (N.D. Ill. 1990).
11. *Bradbury Co. Inc. v. Teissier-du-Cros*, 413 F. Supp. 2d 1209, 1223 (D. Kan. 2006).
12. *Id.* at 1222.

VII. Damages

Lucky may also consider whether to bring a claim for damages. K.S.A. 60-3322 provides for damages, and the damages may include either actual loss or a reasonable royalty. If willful and malicious misappropriation exists, exemplary damages (up to twice the award under section (a)) may be awarded in the discretion of the court.⁵⁶

K.S.A. 60-3323 provides for attorneys fees when the claim of misappropriation is made in bad faith, a motion terminating injunction is made or resisted in bad faith, or willful and malicious misappropriation exists. In such circumstances, the court may award reasonable attorney's fees to the prevailing party.

VIII. Conclusion

Trade secret law recognizes that companies that invest in valuable trade secrets and take reasonable steps to protect those secrets are entitled to protection from misappropriation. The questions involved in determining whether certain information constitutes a "trade secret" and whether there has been a "misappropriation" are complex and fact specific. It is critical for the plaintiff to identify with specificity the trade secrets taken, the reasonable efforts to keep the trade secrets confidential, and the improper means used to misappropriate the trade secrets. ■

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13. *Paradigm Alliance Inc. v. Celeritas Technologies LLC*, 659 F. Supp. 2d 1167, 1185-86.
14. *Garst v. Scott*, 114 Kan. 676, 679, 220 P. at 278.
15. *Fireworks Spectacular Inc. v. Premier Pyrotechnics Inc.*, 86 F. Supp. 2d 1102, 1106 (D. Kan. 2000).
16. *Biocore Inc. v. Khosrowshahi*, 96 F. Supp. 2d 1221, 1235.
17. *Fireworks Spectacular Inc. v. Premier Pyrotechnics Inc.*, 107 F. Supp. 2d 1307, 1310 (D. Kan. 2000).
18. *Paradigm Alliance Inc. v. Celeritas Technologies LLC*, 659 F. Supp. 2d 1167, 1186.
19. *Biocore Inc. v. Khosrowshahi*, 96 F. Supp. 2d 1221, 1235.
20. *Id.*
21. *Id.*
22. *Progressive Prod. Inc. v. Swartz*, 292 Kan. at 958.
23. *Id.* at 951-52.
24. *Id.* at 956-58.
25. *Id.* at 958.
26. *Id.*
27. *Id.*
28. *Biocore Inc. v. Khosrowshahi*, 96 F. Supp. 2d at 1235.
29. *Vasquez v. Ybarra*, 150 F. Supp. 2d 1157, 1172 (D. Kan. 2001).
30. *Bradbury Co. Inc. v. Teissier-du-Cros*, 413 F. Supp. 2d at 1226-27.

31. *Id.* at 1227.
32. 342 F. Supp. 2d 943, 961-62 (D. Kan. 2004).
33. *Id.* at 962.
34. 659 F. Supp. 2d 1167, 1186-87 (D. Kan. 2009).
35. K.S.A. 60-3320(1).
36. *Evolution Inc. v. Suntrust Bank*, 342 F. Supp. 2d at 962-63.
37. K.S.A. 60-3326.
38. *Wolfe Electric Inc. v. Duckworth*, 293 Kan. 375 400, 266 P.3d 516, 532 (2011).
39. 86 F. Supp. 2d 1102, 1106, fn. 2.
40. *See, e.g.*, cases cited, *supra*, at notes 30, 34 and 38.
41. *See, PepsiCo Inc. v. Redmond*, 54 F. 3d 1262, 1271 (7th Cir. 1995); and *Hertz v. Luzenac Group*, 576 F.3d 1103, 1115-16 (10th Cir. 2009).
42. *See, e.g.*, 7240 *Shawnee Mission Holding LLC v. Memon*, 2009 WL 3185344 (D. Kan. 2009) (plaintiff sufficiently pled claim for breach of confidentiality agreement to avoid motion to dismiss); *Meitler Consulting Inc. v. Dooley*, 2007 WL 1834008 (D. Kan. 2007) (default plaintiff enjoined and restricted from disclosing any of the confidential information obtained by or disclosed to him); *Systems Material Handling Co. v. Greenstein*, 1999 WL 760454 (D. Kan. 1999) (declaratory relief available to clarify whether and to what extent plaintiff may, under his employment agreement, disclose confidential information); and *Professional Software Consultants Inc. v. Hill*, 1994 WL 481659 (D. Kan. 1994) (initial and continuing employment was sufficient consideration for first and second confidentiality and non-disclosure agreements).
43. 342 F. Supp. 2d at 962-63.
44. 9 F. 3d 823, 847-48 (10th Cir. 1993).
45. 719 F. Supp. 1006 (D. Kan. 1989).
46. *Id.* at 1011.
47. *Id.*
48. Memorandum and Order, October 24, 2011, 11-CV-2409 (D. Kan.).
49. 54 F. 3d 1262 (7th Cir. 1995).
50. *Id.* at 1269.
51. *See, e.g.*, *EarthWeb Inc. v. Schlack*, 71 F. Supp. 2d 299, 310 (S.D.N.Y. 1999).
52. *Bradbury Co. v. Teissier-Du-Cros*, 413 F. Supp. 2d at 1208-09.
53. K.S.A. 60-3321(b)
54. *Farmers Group Inc. v. Lee*, 29 Kan. App. 2d 382, 390, 28 P.3d 413, 419 (2001).
55. *Koch Eng'g Co. Inc. v. Faulconer*, 227 Kan. 813, 826, 610 P.2d 1094 (1980).
56. K.S.A. 60-3322(b).



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