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Scope of Uniform Trade Secrets Act Trimmed By Arizona Supreme Court

A recent Opinion issued by the Arizona Supreme Court highlights a noteworthy dichotomy in the way various states interpret the pre-emptive effect of their respective Uniform Trade Secrets Acts (“UTSA”). Forty-eight states have enacted some form of the UTSA, which aims to codify and harmonize standards and remedies regarding misappropriation of trade secrets that had emerged in common law and which differed from state to state. Only New York and Massachusetts have not enacted some form of the UTSA.

One important feature of the UTSA is its pre-emptive effect upon state common law causes of action involving trade secrets, including misappropriation and unfair competition. Whether this “displacement” provision of the UTSA applies to claims that involve “confidential information” that does not rise to the level of being a trade secret is the point of departure for the split of authority among the states.

The recent Arizona Opinion in *Orca Communications Unlimited, LLC v. Noder*, No. CV-13-0351-PR (November 19, 2014), involved Ann Noder, who served as president of Orca Communications Unlimited, LLC between 2002 and 2009. The complaint alleges that in 2009 Noder set up a competing company, Pitch Public Relations, LLC and urged Orca’s customers to do business with her new company. The claim at issue before the Arizona Supreme Court alleged that Noder engaged in unfair competition by intending to steal and exploit “confidential and trade secret information about Orca.” Ruling on a motion to dismiss, the Court held that, to the extent the unfair competition claim pertained to confidential information that falls outside of the Arizona UTSA’s definition of trade secret, it was not pre-empted by that statute.

The Court went on to recognize the split of authority among states on whether the UTSA displaces all common law tort claims based on misappropriation of confidential information, noting by example that such claims are pre-empted in Hawaii and New Hampshire, but are not pre-empted in Virginia and Wisconsin.

For employers in UTSA states, it pays to be aware of how the UTSA’s displacement provision is interpreted. Depending on the state’s law, if pursuing litigation against an employee who has resigned and taken merely confidential information which does not amount to a trade secret, the employer may not be limited to the remedies set forth in the UTSA.

Tags: Arizona, Noder, Orca Communications Unlimited, Uniform Trade Secrets Act

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