

# Pleading and Proving a Trade Secret Case

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By Maxwell Goss

## Introduction

Once neglected and underdeveloped, trade secret law has come into its own. In a world of high employee mobility and accelerating technological growth, businesses are increasingly turning to trade secret law to protect their assets and vindicate their interests. Trade secret misappropriation has emerged as a powerful, adaptable cause of action that can be employed to protect competitively valuable information of all kinds, including technical information such as software code, chemical formulas, and engineering drawings, and business information such as customer preferences, pricing information, and market research.

A trade secret case requires careful planning and drafting by the plaintiff's counsel, for a number of reasons. The elements of trade secret misappropriation are elaborate and tricky to plead. More often than not, key facts are in the exclusive control of the defendant. The plaintiff must adequately identify the trade secrets at issue—but must also be careful to maintain their confidentiality and avoid unwittingly limiting the scope of the claim for relief. And where preliminary injunctive relief is sought—as it is in many if not most trade secret cases—it is especially important to have one's facts and legal theories nailed down from the outset.

This article addresses challenges facing the trade secret plaintiff at the pleadings stage and beyond, with emphasis on recent developments in federal and state caselaw. More specifically, it examines the rules for identifying relevant trade secrets, including the timing of disclosure and level of specificity required; the standards for showing that information constitutes a trade secret, including independent economic value and reasonable efforts undertaken to protect secrecy; and issues relating to the different types of misappropriation, including acquisition-only theories and the viability of the doctrine of inevitable disclosure. The article concludes with some suggestions for successfully pleading and proving a trade secret case.

## Trade Secret Basics

### *State and Federal Law*

Nearly every state, including Michigan, has adopted some version of the Uniform Trade Secrets Act (“UTSA”), a model act designed to bring uniformity to the states’ trade secret laws.<sup>1</sup> Michigan’s version (“MUTSA”) is codified at MCL 445.1901 et seq. In 2016, Congress enacted the Defend Trade Secret Act of 2016 (“DTSA”), codified at 18 USC 1836 et seq. DTSA creates a federal cause of action for trade secret misappropriation, but it does not preempt state trade secret law.<sup>2</sup> The statute is largely modeled after UTSA, while adding certain enhanced remedies and protections.<sup>3</sup> The elements of a trade similar claim are substantially identical under MUTSA and DTSA.<sup>4</sup> Except where otherwise noted, the observations about MUTSA in this article also pertain to DTSA and in some respects will pertain to other states’ versions of UTSA by analogy.

### *Misappropriation Elements*

The elements of a claim for trade secret misappropriation are: (1) the plaintiff has protectable trade secrets; and (2) the defendant improperly acquired, disclosed, or used those trade secrets.<sup>5</sup> The simplicity of these elements is deceptive, however, in view of MUTSA’s complicated definitions of key terms. The statute defines a “trade secret” as information that both:

- (i) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- (ii) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.<sup>6</sup>

MUTSA defines “misappropriation” as either of the following:

- (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.

- (ii) Disclosure or use of a trade secret of another without express or implied consent by a person who did 1 or more of the following:
  - (A) Used improper means to acquire knowledge of the trade secret.
  - (B) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was derived from or through a person who had utilized improper means to acquire it, acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use, or derived from or through a person who owed a duty to the person to maintain its secrecy or limit its use.
  - (C) Before a material change of his or her 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.<sup>7</sup>

“Improper means,” in turn, includes “theft, bribery, misrepresentation, breach, or inducement of a breach of a duty to maintain secrecy or espionage through electronic or any other means.”<sup>8</sup>

### Identifying the Trade Secrets

Cases frequently involve a tug-of-war over the identification of the trade secrets the plaintiff contends were misappropriated. At the risk of oversimplifying, plaintiffs typically prefer to stick with broad disclosures early in the case and add more specificity only after substantial discovery, whereas defendants typically demand a high degree of specificity from the start. This tension can play out at two distinct junctures: at the pleadings stage and during discovery.

#### *Pleadings*

A plaintiff must identify the alleged trade secrets at issue “clearly, unambiguously, and with specificity.”<sup>9</sup> But when? Federal courts in Michigan have declared that “such is not necessary at the pleading stage.”<sup>10</sup> One opinion has noted that “the Federal Rules of Civil Procedure do not require heightened pleadings for trade secret claims.”<sup>11</sup> Of course,

there must be some identification of trade secrets in the complaint.<sup>12</sup> Nevertheless, federal courts “are in general agreement that trade secrets need not be disclosed in detail in a complaint for the simple reason that such a requirement would result in public disclosure of the purported trade secrets.”<sup>13</sup>

The same point generally seems to apply in Michigan state courts, albeit less clearly. In a Macomb County Circuit Court opinion, Judge John C. Foster explained that “a plaintiff is not required to plead trade secrets with particularity at this early stage of litigation.”<sup>14</sup> In support, the opinion cited an Eastern District of Michigan case holding that identification with specificity is not necessary at the pleading stage.<sup>15</sup> For its part, the Michigan Court of Appeals or the Michigan Supreme Court do not appear to have weighed in with a published opinion on whether a complaint must identify trade secrets with particularity. To be sure, a handful of unpublished opinions cite a federal case holding that “[a] party alleging trade secret misappropriation must particularize and identify the purported misappropriated trade secrets with specificity.” However, in all but one of those opinions, the citation was made in connection with a motion for summary disposition under MCR 2.116(C)(10), under which a court reviews the evidence and not just the pleadings.<sup>16</sup>

#### *Discovery*

The identity of the secrets can often become a point of contention during discovery. The plaintiff may contend that it cannot ascertain the scope of the misappropriation—and cannot identify the relevant secrets—without discovery into matters within the defendant’s exclusive control. Courts have observed that informational asymmetries can place the plaintiff in a catch-22 situation:

Satisfying the requirement of detailed disclosure of the trade secrets without knowledge [of] what the defendant is doing can be very difficult. If the list is too general, it will encompass material that the defendant will be able to show cannot be trade secret. If instead it is too specific, it may miss what the defendant is doing.<sup>17</sup>

On the other hand, the defendant may contend that it should not be saddled with production obligations without an understanding of the precise trade secrets at issue. Courts have expressed concern that allowing discovery before the trade secrets have been

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identified may set up a fishing expedition or enable a plaintiff to “mold its cause of action around the discovery it receives.”<sup>18</sup>

In a number of courts, while the trade secrets need not be specifically identified in the complaint, the plaintiff must still identify them with reasonable particularity before it can compel discovery from the defendant regarding the secrets. In some jurisdictions— notably, California and Delaware—pre-discovery disclosure is a fixed requirement.<sup>19</sup> In others, courts decide in each instance whether to follow this approach. Indeed, “[t]he divergent rulings from various federal courts on the issue of whether to require pre-discovery identification of trade secrets reinforces the idea that rulings on discovery limitations are a case-by-case decision where courts must use their broad discretion based heavily on the distinct circumstances of any particular action.”<sup>20</sup>

In the Eastern District of Michigan, courts largely favor pre-discovery identification of trade secrets. In a widely cited opinion, Magistrate Judge Mona K. Majzoub explained that a plaintiff “will normally be required to identify with reasonable particularity the matter which it claims constitutes a trade secret, before it will be allowed (given a proper showing of need) to compel discovery of its adversary’s trade secrets.”<sup>21</sup> In Michigan state courts, however, litigation tends to be more flexible, and there appears to be no discernable authority addressing pre-discovery identification of trade secrets. Nevertheless, it should be noted that state trial courts are authorized to enter protective orders “for good cause shown” and to control the timing and sequence of discovery “for the convenience of parties and witnesses and in the interests of justice.”<sup>22</sup>

## Establishing Trade Secrecy

### *Independent Economic Value*

A trade secret plaintiff must not only identify the trade secrets at issue but must plead and prove that they are, in fact, trade secrets. To do so, the plaintiff must first show that the information has economic value, and that it derives that value from being unknown to competitors.<sup>23</sup> As one court put it, “[t]o have independent economic value ‘the secret information must afford the owner a competitive advantage by having value to the owner and potential competitors.’”<sup>24</sup>

Competitive value was a critical issue in *Ukrainian Future Credit Union v Seikely*, in

which a former credit union employee was accused of wrongfully obtaining credit union documents containing customer loan information, social security numbers, account numbers, and other information.<sup>25</sup> According to the credit union’s amended complaint, the information was “highly valuable to it, as confidentiality of the records must remain private pursuant to bank secrecy laws and state and federal civil and criminal statutes.”<sup>26</sup> The court found that the credit union had failed to allege that the information had independent economic value because its allegations said nothing about its value to a competitor. “Instead, the Credit Union defines the value of the information based upon the regulatory consequences of disclosure, not based upon its value to some other entity competing for its customers.”<sup>27</sup> For this and other reasons, the court dismissed the complaint under Rule 12(b)(6) and denied leave to file a second amended complaint on grounds of futility.<sup>28</sup>

### *Efforts to Maintain Secrecy*

To establish that the information at issue constitutes trade secrets, a plaintiff must also plead and prove that the information is the subject of reasonable efforts to maintain its secrecy.<sup>29</sup> Courts have recognized three types of measures a trade secret owner may take to maintain secrecy:

Such measures generally include either an express agreement between the employer and employee restricting or prohibiting disclosure by the latter to third parties; a disclosure by employer to employee in confidence or with a tacit understanding, inferable from the attendant circumstances, that the information is confidential; or security precautions utilized by the employer to insure that only a limited number of authorized individuals have access to the information.<sup>30</sup>

Determining the reasonableness of protective measures involves a balancing of costs and benefits and will vary from case to case.<sup>31</sup> Accordingly, “except where the evidentiary showing of reasonable efforts could not conceivably support a judgment in favor of the plaintiff, the reasonableness of the efforts is a question for the trier of fact.”<sup>32</sup>

A recent unpublished opinion of the Michigan Court of Appeals illustrates the standards for evaluating reasonable efforts at the pleading stage. In *Theisen v Inventive*

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*Consulting LLC*, the plaintiffs—an individual and his wholly-owned limited liability company—alleged in their complaint that the defendants had misappropriated trade secrets contained in a “PowerPoint deck with business plans, executive summaries, cost analysis, and other items used in the development and marketing” of certain IP that was the subject of a contemplated joint venture.<sup>33</sup> The complaint alleged that each page was marked “HIGHLY CONFIDENTIAL PROPERTY OF THE THEISEN GROUP” and that the trade secrets were “known only by [p]laintiffs and limited representatives on a need to know basis.”<sup>34</sup> The trial court dismissed the complaint under MCR 2.116(C)(8), finding that it contained no specific allegations of efforts made to maintain secrecy.<sup>35</sup>

The appeals court reversed the trial court’s ruling, holding that the plaintiffs’ allegations that they had shared the information at issue with only limited persons and had marked each page of the deck as highly confidential were sufficient.<sup>36</sup> In so ruling, the appeals court made two observations of interest. First, contrary to what the defendants argued, the plaintiffs were not required to secure a nondisclosure agreement, noting that a jury could find that a plaintiff had made reasonable efforts to maintain confidentiality even without such an agreement.<sup>37</sup> Second, the fact that the plaintiffs’ operation was a small one—as reflected by the fact that the company was a single-member limited liability company with the individual plaintiff as its sole member—supported the conclusion that their efforts to maintain secrecy were reasonable.<sup>38</sup> This is because, as courts have held, “[t]he precautions that are reasonable for a large commercial organization may be unreasonable for a smaller operation depending on the required cost benefit analysis.”<sup>39</sup>

### Establishing Misappropriation

A plaintiff must allege that the trade secrets were misappropriated through improper acquisition, disclosure, or use.<sup>40</sup> Fortunately for the plaintiff, MUTSA “sets a relatively low bar for pleading misappropriation.”<sup>41</sup> Nevertheless, the elements must be properly pleaded—and proved.

#### *Improper Acquisition*

Though most cases focus on improper disclosure or use, it is possible to allege a case based simply on improper acquisition. In a case from the Northern District of Califor-

nia, the plaintiff alleged that the defendant acquired certain resins knowing that they had been created using the plaintiff’s trade secrets.<sup>42</sup> Though no allegations of improper disclosure or use were made, the court determined that it had stated a claim for misappropriation through wrongful acquisition of trade secrets.<sup>43</sup> Despite this ruling, it is important to note that an “acquisition-only” theory can create challenges for a plaintiff’s damages case because it is often not clear that mere acquisition will result in economic injury to the plaintiff or unjust enrichment of the defendant. In a more recent case from the Northern District of California, the court denied the plaintiff’s request for a jury instruction on acquisition-only damages because “the only discernable damages theories preserved by [plaintiff] have been grounded in defendants’ alleged use or disclosure of trade secrets.”<sup>44</sup>

#### *Inevitable Disclosure*

Improper disclosure and use frequently come up in the employment context, where an employee may be accused of disclosing and using the former employer’s trade secrets in service of the new employer. Some jurisdictions, elaborating on the Uniform Trade Secret Act’s authorization of injunctions as a remedy for “threatened” (as opposed to “actual”) misappropriation,<sup>45</sup> have adopted the so-called doctrine of “inevitable disclosure.” Under this theory, a plaintiff may obtain relief based on a finding that its former employee will “inevitably” disclose its trade secrets to the person’s new employer.<sup>46</sup> The doctrine allows a plaintiff to go forward in the absence of evidence of actual disclosure or use. It is typically invoked to support a preliminary injunction, although it may also be invoked, in jurisdictions that recognize it, to overcome a motion to dismiss.<sup>47</sup>

Where available, the doctrine of inevitable disclosure generally applies in cases in which the employee goes to work for a competitor of the plaintiff, the trade secrets have been clearly specified, the secrets bear directly on the employee’s new responsibilities, and the employee has behaved in a duplicitous manner.<sup>48</sup> As to this final point, in *PepsiCo, Inc v Redmond*, the seminal case on inevitable disclosure, the court found that the former employee’s “lack of forthrightness” and “out and out lies” prior to departure supported the conclusion that he “could not be trusted to act with the necessary sensitivity and good

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faith under the circumstances in which the only practical verification that he was not using plaintiff's secrets would be [his] words to that effect."<sup>49</sup>

Several courts have observed that Michigan has not adopted the doctrine of inevitable disclosure.<sup>50</sup> Nevertheless, while there is no mandatory authority affirmatively applying the doctrine under Michigan law, there are indications that the doctrine may be viable. Many courts have cited *CMI International, Inc v Internet International Corporation*, in which the court of appeals affirmed the trial court's entry of summary disposition against a plaintiff that had relied on the doctrine of inevitable disclosure.<sup>51</sup> After discussing *PepsiCo*, the court explained:

Even assuming that the concept of "threatened misappropriation" of trade secrets encompasses a concept of inevitable disclosure, that concept must not compromise the right of employees to change jobs. Accordingly, we hold that for a party to make a claim of threatened misappropriation, whether under a theory of inevitable disclosure or otherwise, the party must establish more than the existence of generalized trade secrets and a competitor's employment of the party's former employee who has knowledge of trade secrets.<sup>52</sup>

The court then pointed out that the plaintiff had offered no evidence of duplicity and had not even identified a specific trade secret that was likely to be disclosed.<sup>53</sup> Concluding that "CMI cannot establish a basis on which to claim inevitable disclosure," the court ruled for the defendant.<sup>54</sup>

A recent unpublished opinion from the Michigan Court of Appeals suggests that the doctrine has not been rejected. In *Gen-Wealth, Inc v Freckman*, the court stated that it had "accepted" the doctrine of inevitable disclosure in *CMI*, with the caveat that a party "must establish more than the existence of generalized trade secrets and a competitor's employment of the party's former employee who has knowledge of trade secrets."<sup>55</sup> However, as in *CMI*, the court found that the facts of the case did not warrant application of the doctrine because "there was no evidence that Freckman's skills as an advisor were limited to his ability to exploit trade secrets."<sup>56</sup>

Perhaps most notably, a 2019 case from the Eastern District of Michigan actually applied the doctrine of inevitable disclosure.

In *Radiant Global Logistics, Inc v Fursteneau*, Judge Paul D. Borman separately addressed "actual" and "threatened" misappropriation under MUTSA.<sup>57</sup> The court reviewed the testimony of the defendants at a preliminary injunction hearing—including various denials and implausible assertions regarding the opening of an office for a competitor, the hiring of the former employer's team, and other matters—and concluded that it was "inherently incredible."<sup>58</sup> Though the opinion did not use the phrase "inevitable disclosure," it cited *PepsiCo* with approval and granted the injunction in part because the plaintiff was likely to succeed on the merits of its claim of threatened misappropriation.<sup>59</sup> In the court's words, one defendant's lack of candor "would support a conclusion of his willingness to use the trade secrets in his possession" on behalf of his new employer, and that "[t]he more confidential information [he] possesses, the higher the likelihood that he will use that information on behalf of" the new employer.<sup>60</sup>

### Takeaways for Practitioners

These are just some of the issues facing litigants in a misappropriation case. The good news is that courts tend to take a flexible, case-by-case approach to evaluating trade secret claims. But while this flexibility may benefit a plaintiff, it can sometimes make outcomes hard to predict. In light of the issues identified in this article, practitioners should consider the following points:

- The standard for identifying trade secrets in the complaint is not an exacting one. However, when seeking a preliminary injunction, more detail is better. Moreover, once discovery commences, trade secrets will likely need to be identified with reasonable particularity.
- Whether seeking injunctive relief, damages, or both, it is important to set forth the economic value of the trade secrets at issue. This includes showing their actual or potential value to competitors and that their value derives from their secrecy.
- When it comes to trade secrets, courts help those who help themselves. The trade secret owner needs to plead and prove that it used reasonable measures to maintain secrecy, such as confidentiality agreements, limitation of access, or security precau-

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tions.

- With the right facts, “inevitable disclosure” should not necessarily be ruled out as a basis for injunctive relief under MUTSA. Among other things, a showing of duplicity or untrustworthiness would be needed for a claim of inevitable disclosure to succeed.
- Circumstantial evidence is often critical in a trade secret case, and courts understand this. Even when relying on circumstantial evidence, be sure to develop as robust a picture as possible to avoid any implication that one’s allegations are speculative or conclusory.

Most fundamentally, the plaintiff’s attorney should know statutory definitions of “trade secret” and “misappropriation” inside and out. To succeed at the pleading stage and beyond, one must plead and prove that the various components of those multipart definitions are satisfied.

## NOTES

1. See *Trade Secrets Act*, UNIFORM LAW COMMISSION, available at <https://www.uniformlaws.org/committees/community-home?CommunityKey=3a2538fb-e030-4e2d-a9e2-90373dc05792> (last accessed Nov. 5, 2021).

2. See H. Rep. No. 114-529, at 2-5 (2016).

3. See *id.* at 12 (2016).

4. E.g., *FCA US LLC v Bullock*, 446 F Supp 3d 201, 212 (ED Mich 2020).

5. *Ajuba Int’l, LLC v Sabaria*, 871 F Supp 2d 671, 691 (ED Mich 2012) (citation omitted).

6. MCL 445.1902(d); cf. 18 USC 1839(3).

7. MCL 445.1902(b); cf. USC 1839(5).

8. MCL 445.1902(b); cf. USC 1839(6).

9. *Utilase, Inc v Williamson*, Nos. 98-1233, 98-1320, 1999 US App LEXIS 22452, at \*6 (6th Cir Sept 10, 1999 (quoting *Shatterproof Glass Corp v Guardian Glass Co*, 322 F Supp 854, 867 (ED Mich 1979)); see also *Dura Global Techs, Inc v Magna Donnelly Corp*, 662 F Supp 2d 855, 859 (ED Mich 2009).

10. *Compuware Corp v IBM*, 259 F Supp 2d 597, 605 (ED Mich 2002); see also *Two Men & a Truck, Int’l, Inc v Cutlip*, No 1:12-cv-34, 2012 US Dist LEXIS 199132, at \*15-16 (WD Mich Sept 12, 2012).

11. *Foulke Consulting Servs v Blazemeter, Inc*, No. 20-11446, 2020 US Dist LEXIS 225749, at \*12 (ED Mich Nov 16, 2020).

12. See, e.g., *Bioquell, Inc v Feinstein* No 10-2205, 2010 US Dist LEXIS 124077, at \*18 (ED Pa Nov 23, 2010) (dismissing trade secret claim where complaint failed to “identify the[] trade secret” and was instead “merely a string of conclusory statements devoid of any factual basis”).

13. *Leucadia, Inc v Applied Extrusion Techs, Inc*, 755 F Supp 635, 636 (D Del 1991).

14. *JM Polymers, Inc v Spartan Polymers, LLC*, No 2013-3899-CK, unpub op at 10 (Mich 16th Cir Ct Feb 18, 2014) (citing *Interactive Solutions Group, Inc v Autozone Parts, Inc*, No 11-13182, 2012 US Dist LEXIS 52951, at \*8 (ED Mich Apr 16, 2012)).

15. *Id.*

16. See, e.g., *Lowry Holding Co v Geroco Tech Holding Corp*, No 303694, 2012 Mich App LEXIS 1033, at \*8 (Mich Ct App May 24, 2012). The one outlier is *Jasper v Bloomfield Village Investor Holding, LLC*, No 337098, 2018 Mich App LEXIS 1097, at \*12-13 (Mich Ct App Apr 3, 2018), which affirmed the trial court’s denial of leave to file a second amended complaint where “plaintiff failed to identify with particularity what portion of his 103-page business plan constituted the trade secret.” That case is unusual in that the plaintiff had already specified a single document that allegedly contained a trade secret but then could not point to the alleged secret. In any event, the holding may be open to question in that it relies on *Dura*, *supra*, at 859 (ED Mich 2009), which was decided on a motion for summary judgment rather than a motion to dismiss.

17. *DeRubeis v Witten Techs, Inc*, 244 FRD 676, 680 (ND Ga 2007) (quoting Lynn H. Pasahow, *Patent and Trade Secret Biotechnology Litigation*, 1993 *Biotechnology: Business, Law, and Regulation* 37, 52 (ALI-ABA Course Study Materials)); see also, e.g., *Oakwood Labs, LLC v Thanoo*, 999 F3d 892, 907 (3rd Cir 2021) (citing *DeRubeis*, 244 FRD, at 680)).

18. *DeRubeis*, *supra*, at 682.

19. See Cal Civ Proc Code 2019.210; *Engelhard Corp v Savin Corp*, 505 A2d 30, 33 (Del Ch 1986).

20. *A&P Tech, Inc v Lariviere*, No 1:17-cv-534, 2017 US Dist LEXIS 211822, at \*22 (SD Ohio Dec 27, 2017).

21. *Dura Global Techs, Inc v Magna Donnelly Corp*, No 07-cv-10945, 2007 US Dist LEXIS 89650, at \*6-7 (ED Mich Dec 6, 2007) (internal quotations and citation omitted).

22. MCR 2.302(C), (D).

23. See MCL 445.1902(d)(i); cf. USC 1839(3)(B).

24. *Giasson Aerospace Sci, Inc v RCO Eng’g, Inc*, 680 F Supp 2d 830, 843 (ED Mich 2010) (quoting *Daimler-Chrysler Servs N Am, LLC v Summit Nat’l, Inc*, 289 Fed Appx 916, 922 (6th Cir 2008)).

25. *Ukrainian Future Credit Union v Seikeby*, No 17-cv-11483, 2017 US Dist LEXIS 194165 (ED Mich Nov 27, 2017).

26. *Id.* at \*25.

27. *Id.*

28. *Id.* at \*27.

29. MCL 445.1902(d)(ii); cf. USC 1839(3)(A).

30. *Kubik, Inc v Hull*, 56 Mich App 335, 348, 224 NW2d 80 (1974).

31. See *Niemi v NHK Spring Co*, 543 F3d 294, 300-301 (6th Cir 2008).

32. *Id.* at 303.

33. *Theisen v Inventive Consulting LLC*, Nos 352952, 353990, 2021 US Mich App LEXIS, at \*8 (Mich Ct App Aug 12, 2021).

34. *Id.* at \*9.

35. *Id.* at \*10.

36. *Id.* at \*10-11.

37. *Id.* at \*10 (citing *Giasson*, *supra*, at 840).

38. *Id.* at \*11 (citing *Giasson*, *supra*, at 840).

39. *Giasson*, *supra*, at 840.

40. MCL 445.1902(b); cf. USC 1839(5).

41. *Ajuba*, *supra*, at 691 (citations omitted).

42. *ATS Prods v Champion Fiberglass, Inc*, No C-13-02403 SI, 2014 US Dist LEXIS 13886 (ND Cal Feb 3, 2014).

43. *Id.* at \*8-9.

44. *Waymo LLC v Uber Techs, Inc*, No C 17-00939 WHA, 2018 US Dist LEXIS 8263, at \*15 (ND Cal Jan 18, 2018).

45. MCL 445.1903(1). The DTSA sharply limits the inevitable disclosure doctrine. *See* 18 USC 1836(b)(3)(A)(i)(1).

46. *See PepsiCo, Inc v Redmond*, 54 F3d 1262 (7th Cir 1995).

47. *See, e.g., Milliken & Co v Smith*, No 7:10-cv-00301-JMC, 2011 US Dist LEXIS 27685, at \*10 (DSC Mar 6, 2011) (“[T]his court does not doubt that ‘inevitable disclosure’ could be properly pled as part of a misappropriation claim.”).

48. *See Estee Lauder Cos v Batra*, 430 F Supp 2d 158, 176 (SDNY 2006).

49. *PepsiCo, supra*, at 1270.

50. *Kelly Servs, Inc v Marzullo*, 591 F Supp 2d 924, 942 (ED Mich 2008); *Stryker Corp v Ridgenway*, 2016 US Dist LEXIS 10636, at \*25 (WD Mich Jan 29, 2016); *Erllich Protection Sys v Flint*, 2019 Mich App LEXIS 6952, at \*9 (Mich Ct App Nov 7, 2019).

51. *CMI Int’l, Inc v Internet Int’l Corp*, 251 Mich App 125, 649 NW2d 808 (2002).

52. *Id.* at 133-34 (citations omitted).

53. *Id.* at 134.

54. *Id.*

55. *Gen-Wealth, Inc v Freckman*, No 353584, 2021 Mich App LEXIS 3003, at \*38 (Mich Ct App May 13, 2021) (quoting *CMI, supra*, at 134).

56. *Id.* at \*39.

57. *Radiant Global Logistics, Inc v Fursteneau*, 368 F Supp 3d 1112 (ED Mich 2019).

58. *Id.* at 1132.

59. *Id.* at 1133.

60. *Id.* (citation omitted).



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