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Seventh Circuit Drills Down on Defining a Trade Secret Under the DTSA

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The first step in establishing a claim for misappropriation of trade secrets under the federal Defend Trade Secrets Act ("DTSA") is proving that the information at issue is a protectable trade secret. The level of specificity required to meet this threshold requirement has posed difficult questions for courts and litigants in trade secret cases.

In its recent ruling in *NEXT Payment Solutions Inc. v. CLEAResult Consulting, Inc.*,[1] the Seventh Circuit drilled down on the level of specificity required to establish a trade secret in the context of allegedly stolen software.[2] In particular, the Seventh Circuit held that the plaintiff was required to describe *how* the software worked, not just *what* the software did.[3] The Seventh Circuit suggested that the plaintiff could have met this requirement by pointing to its software's underlying source codes or algorithms, but did not go so far as to require such evidence in all trade secret cases involving software.[4]

We discuss the Seventh Circuit's decision and our takeaways below.

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[1] *NEXT Payment Sols., Inc. v. CLEAResult Consulting, Inc.*, 163 F.4th 1091 (7th Cir. 2026).

[2] *Id.*

[3] *Id.* at 1096-97.

[4] *Id.* at 1099.

Background on DTSA Trade Secret Misappropriation Claims

To prevail on a DTSA trade secret misappropriation claim, a plaintiff must demonstrate three elements: 1) the information constitutes a trade secret; (2) it was misappropriated; and (3) it was used in the defendant's business. [5] The first element can be satisfied if two conditions are met: the owner has taken reasonable measures to keep it secret, and the information derives independent value from not being generally known or readily ascertainable. [6] The Seventh Circuit requires a "high level of specificity when a plaintiff makes a claim for misappropriation of a trade secret," [7] but what counts as specific enough is not always clear.

Next Payment v. CLEAResult

The dispute arose from a partnership between NEXT, a developer of customer service software and customizable scheduling tools for businesses, and CLEAResult, a firm providing utility energy-efficiency programs. CLEAResult hired NEXT to build a custom online scheduling tool and, after years of use, CLEAResult terminated its relationship with NEXT and started using its own scheduling tool. NEXT then sued CLEAResult in the Northern District of Illinois, alleging that CLEAResult violated the DTSA by stealing trade secret information from NEXT's scheduling tool to reverse engineer and replicate its features into CLEAResult's new scheduling tool. [8]

Following years of litigation and discovery, the district court required NEXT to provide more information on the features of its software that it contended were misappropriated and to explain why they were trade secrets. [9] Although NEXT produced a spreadsheet identifying a list of thirty-four software "modules" and five "combinations of modules and features" it contended were trade secrets, the district court granted summary judgment in favor of CLEAResult, holding that NEXT had not described its alleged trade secrets with enough specificity. [10] The Seventh Circuit affirmed the district court's decision on appeal, holding that NEXT failed to establish a protectable trade secret.

The Seventh Circuit's Opinion

In evaluating whether the information NEXT identified constituted trade secrets, the Seventh Circuit emphasized that "the requisite level of detail depends on the circumstances of each case." [11] However, "a plaintiff must present enough specifics for the fact finder to distinguish between information that is generally known and information that is not readily ascertainable and thus qualifies as a trade secret." [12]

Turning to the alleged trade secret information in NEXT's spreadsheet of software modules and features, the Seventh Circuit held that "NEXT's descriptions face a fundamental problem: NEXT only ever tells us the end result of what its software does, not how it does it." [13] For example, NEXT alleged that one of its trade secrets allowed its

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[5] *See Learning Curve Toys, Inc. v. PlayWood Toys, Inc.*, 342 F.3d 714, 721 (7th Cir. 2003).

[6] *See* 18 U.S.C. § 1839(3); *Life Spine, Inc. v. Aegis Spine, Inc.*, 8 F.4th 531, 540 (7th Cir. 2021).

[7] *NEXT Payment Sols., Inc.*, 163 F.4th at 1096.

[8] *Id.* at 1094.

[9] *Id.* at 1095.

[10] *Id.*

[11] *Id.* at 1096.

[12] *Id.*

[13] *Id.*

software to "'manage[] the inventory of appointments' by interfacing with numerous other modules to 'present real-time appointment availability' and 'pre-set the number of available appointments based on the customer's geographic location . . . [and] the availability of technicians.'"[14] The Seventh Circuit found that this description was not specific enough to constitute a trade secret because "how the software achieves that process is left unspecified."[15] Put another way, "[d]escribing the software functions without disclosing the underlying methods is like saying someone stole your top secret apple pie recipe, but never identifying the secret recipe itself."[16]

The Seventh Circuit left open the question of whether NEXT's software could contain some protectable trade secrets, noting that "[t]he most likely candidate would be [the NEXT software's] underlying source code, rules, and algorithms."[17] Yet despite its focus on the lack of identifiable source codes or algorithms, the Seventh Circuit did not go so far as to hold that a trade secret plaintiff in a software case "must always provide their underlying source code or algorithms to survive summary judgment."[18] Rather, the Seventh Circuit suggested in a footnote that, "[i]n practical terms, pointing to source codes or algorithms is often the most efficient way to identify a protectable secret."[19] The Seventh Circuit did not "exclude the possibility that a plaintiff may, under some circumstances, be able to come forward with other kinds of evidence demonstrating that its software functions in a manner that is not generally ascertainable and derives value from being kept secret."[20]

Conclusion

The Seventh Circuit's decision in *NEXT* has important implications for trade secret litigants on both sides of the "v." The first element of a DTSA trade secret misappropriation claim—that the information at issue is a trade secret— must be strategically and carefully considered from the outset of a case through trial. To establish that their information is a trade secret in the software context, plaintiffs should provide concrete descriptions of *how* their trade secret works. To do so, plaintiffs should consider submitting evidence regarding the algorithms or source codes underlying their software. On the other hand, defendants in trade secret cases involving software can use the absence of algorithms or source codes to argue against the presence of a protectable trade secret. Defendants can also attack trade secret claims—like the ones in *NEXT*—that rely on generic or high-level descriptions of functionality.

Companies and consultants also should closely examine how their contractual relationships address the issue of trade secrets. If CLEAResult and NEXT had more clearly defined the scope of their relationship and the confidentiality of the software that CLEAResult hired NEXT to develop, then perhaps they could have avoided years of litigation.

We will continue to closely monitor these legal developments in the trade secret space.

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[14] *Id.* at 1097.
[15] *Id.*
[16] *Id.* at 1098.
[17] *Id.*
[18] *Id.* at n. 3.
[19] *Id.*
[20] *Id.*

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If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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