

Mind Your Audience: Disclosure of Confidential Information to AI Programs Can Give Rise to Trade Secret Misappropriation Claims

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AI tools such as Chat GPT and Otter are becoming common programs that employees use to help streamline business tasks. Otter, for example, is an AI Meeting Assistant that automatically transcribes and summarizes meetings in real time, records audio, captures slides, extracts action items, and generates content such as e-mails and status updates. While tools like Otter may provide quick answers or help synthesize a large volume of information, employers and employees alike should be mindful of the types of information fed to (and possibly stored in) AI programs. The use of an AI tool to, for example, record a meeting that discusses company confidential information, can give rise to claims of trade secret misappropriation.

For example, in a recently filed complaint in the U.S. District Court for the District of Connecticut,[1] two Nebraska-based technology companies sued a former salesman for trade secret misappropriation. The complaint alleges the former employee, among other things, used Otter to record and transcribe confidential meetings. Plaintiffs West Technology Group LLC and CX360 Inc. allege they discovered the issue when, four days after former employee Karl Sundstrom was fired, Otter automatically attempted to join a sales call under Sundstrom's name. The plaintiffs assert that Otter is an "unauthorized" AI program, and that the recording of confidential information was performed without consent of all participants of such calls. The plaintiffs also complained that because company confidential information was siphoned to Otter, the defendant continues to have access to that information even after termination. The plaintiffs assert claims for Misappropriation of Trade Secrets under the Defend Trade Secrets Act (DTSA) (18 U.S.C. § 1836(b)(1)), and Breach of Contract for breaching various confidentiality obligations in employment agreements.

An understood hallmark of trade secret law is that in order for information to rise to the level of a trade secret, it must be kept secret and subject to reasonable efforts to maintain secrecy. But, because AI programs such as ChatGPT and Otter are third party programs which use their own algorithms and platforms, what may seem like an innocent use of helpful productivity tools can actually give rise to significant legal claims. Information may not rise to the level of a trade secret where it is readily shared with a third-party software program with unknown security parameters.

As another example, it was [recently reported](#) that several Samsung software engineering employees used ChatGPT to check and evaluate confidential company source code. Even though it may appear

that ChatGPT was used for purely internal purposes, such disclosure may rise to trade secret misappropriation claims because the confidential information can be used by tools such as Chat GPT to optimize its algorithm and the information could potentially be accessible to other users of the tool.

Employers should be mindful to clarify in their employment agreements, confidentiality agreements, employee handbooks and employee training materials, that using AI tools to receive or record company confidential information without authorization is prohibited. Employees should be careful to only use AI tools in limited circumstances, and to not disclose company confidential information to such tools without express authorization.

FOOTNOTES

[1] *West Technology Group LLC et al. v. Sundstrom*, case number 3:24-cv-00178, U.S. District Court for the District of Connecticut.

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