

Arizona Supreme Court Holds That The Uniform Trade Secrets Act Only Preempts Claims for Misappropriation of Trade Secrets, Not Other Confidential Information

Article By:

William B. Berndt

David L. De Bruin

Marcus D. Fruchter

Nicholas A. Gowen

Steven A. Weiss

In [Orca Communications Unlimited, LLC v. Noder](#) (Ariz. Nov. 19, 2014), the Arizona Supreme Court ruled that Arizona's version of the *Uniform Trade Secrets Act* (the "AUTSA") "does not displace common-law claims based on alleged misappropriation of confidential information that is not a trade secret." Orca, a public relations firm, filed suit against Ann Noder, its former president, for unfair competition after Noder left Orca to start a rival company. Orca alleged that Noder had learned confidential and trade secrets information about "Orca's business model, operation procedures, techniques, and strengths and weaknesses," and that Noder intended to "steal" and "exploit" that information and Orca's customers for her company's own competitive advantage. The trial court dismissed Orca's complaint at the pleadings stage, concluding that the AUTSA preempts Orca's "common law tort claims arising from the alleged misuse of confidential information," even if such information is "not asserted to rise to the level of a trade secret." The court of appeals reversed in part, holding that the AUTSA preemption exists only to the extent that the unfair competition claim is based on misappropriation of a trade secret.

The Arizona Supreme Court considered the text of the 1990 AUTSA's displacement provision, concluding that nothing in the language of the statute "suggests that the Legislature intended to displace any cause of action other than one for misappropriation of a trade secret." "If such broad displacement was intended, the legislature was required to express that intent clearly." The court assumed, but did not decide, that Arizona's common law recognizes a claim for unfair competition. Nor did it decide what aspects, if any, of the alleged confidential information in plaintiff's unfair competition claim might fall within the AUTSA's broad definition of a trade secret and therefore be displaced. "That determination will not hinge on the claim's label, but rather will depend on discovery and further litigation that has not yet occurred."

While the court acknowledged the split of authority among various states as to the preemptive effects of the Uniform Trade Secrets Act, it found that the “quest for uniformity is a fruitless endeavor and Arizona’s ruling one way or the other neither fosters nor hinders national uniformity.” With its ruling, the Arizona Supreme Court joins courts in states such as Pennsylvania, Virginia and Wisconsin that have narrowed the preemptive effects of the Uniform Trade Secrets Act. Conversely, courts in other states including California, Indiana, Hawaii, New Hampshire, and Utah have held that Uniform Trade Secrets Act statutes should be read to broadly preempt all claims related to the misappropriation of information, regardless of whether the information falls within the definition of a trade secret.

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National Law Review, Volumess IV, Number 335

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