

District Court Summarily Dismisses DTSA Claim Because Company Failed to Mark Information as Confidential

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In *Call One, Inc. v. Anzine*, a court in the Northern District of Illinois granted summary judgment in favor of the defendant after concluding that a reasonable jury could not find that a former employee misappropriated Call One's trade secrets in violation of the Defend Trade Secrets Act (DTSA), because the company failed to label the information at issue as confidential.

Specifically, in January 2018, Call One filed suit against the defendant, a former employee, alleging, among other things, that she violated the DTSA by misappropriating a trade secret when she sent a customer report to herself, her fiancé, and her lawyer. The email originally sent to the defendant that attached the customer report did not state that the information contained in the report was confidential or that the report constituted a trade secret, and the report itself contained no such designation.

The court did not reach the question of whether the customer report constituted a trade secret within the meaning of the DTSA, because it held that Call One failed to present evidence from which a reasonable jury could find the requisite misappropriation. Although the court noted that the customer report was not known to the public and that Call One policies prohibited employees from disclosing confidential information, the court was persuaded by the fact that Call One's policies required employees to label all confidential information and trade secrets as such, yet the report was not so identified. Therefore, the court held that no reasonable jury could find that defendant acquired knowledge of the customer report through improper means by breaching a duty to maintain secrecy.

TIP: To avoid undermining potential future claims of misappropriation under the DTSA, companies should take steps to ensure that, in the course of day-to-day operations, employees adhere to the requirements set forth in corporate policies that govern the access to and circulation of confidential information and trade secrets.

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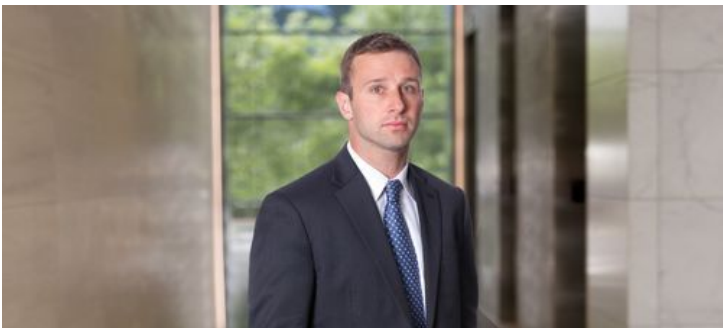
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