

## Fourth Circuit Holds That Trade Secret Protection Can Exist for Combinations of Public Information

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In a recent decision, the United States Court of Appeals for the Fourth Circuit held that, when combined in a manner that adds value, entirely public information can qualify as a trade secret under the Maryland Uniform Trade Secrets Act (MUTSA). Quoting from an opinion from the Second Circuit, the Fourth Circuit stated that “a trade secret can exist in a combination of characteristics and components, each of which, by itself, is in the public domain, but the unified process, design, and operation of which, in unique combination, affords a competitive advantage and is a protectable secret.”

AirFacts, Inc., a software company that develops and licenses auditing software for analyzing ticket fares and pricing for airlines, filed a complaint against a former employee, Diego de Amezaga. The claims included misappropriation of trade secrets under MUTSA. After his AirFacts employment ended, de Amezaga, using a company account, downloaded two flowcharts that he had created during his time at AirFacts. He then submitted the flowcharts to a different company as a part of a job application. The charts contained a compilation of information about the ticket auditing process. The Maryland district court dismissed the trade secret misappropriation claim in favor of de Amezaga, finding that the flowcharts were simply an “overview” of public information and widely available to AirFacts’ employees, and thus were not trade secrets.

On appeal, the Fourth Circuit reversed the district court’s finding, holding that the flowcharts were indeed trade secrets. The Fourth Circuit concluded that the flowcharts were independently valuable due to months of de Amezaga’s “painstaking, expert arrangement of the...data” which made the flowcharts “inherently valuable separately and apart from the publicly available contents.” The Fourth Circuit also found that the flowcharts had independent economic value because they would improve AirFacts’ efficiency in the performance of its contractual obligations. Last, the Fourth Circuit determined that AirFacts had preserved the flowcharts as trade secrets by taking reasonable steps to maintain their secrecy, such as requiring employees to sign confidentiality agreements and giving only a few employees access to certain accounts.

**TIP: Even public information may be entitled to trade secret protection if a company compiles and uses that information in valuable ways, and takes reasonable steps to maintain the privacy of such information. However, companies and counsel must be aware of nuances under each state’s trade secret laws, the federal Defend Trade Secrets Act, and the EU trade secret directive regarding compilations of information.**

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