

Eleventh Circuit Rules That Scraping Publicly Available Data May Constitute Trade Secret Misappropriation

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The Eleventh Circuit recently overturned a magistrate's conclusion that the public availability of information the defendants scraped from a website precluded a claim for trade secret misappropriation under Florida's Uniform Trade Secrets Act. *Compulife Software v. Newman*, No. 18-12004 (11th Cir. May 20, 2020).

As part of two consolidated lawsuits, Compulife alleged that defendants, who were direct competitors in the business of generating life-insurance quotes: (1) posed as licensees to gain access to Compulife's proprietary database containing "up-to-date information on many life-insurers premium-rate tables" for use in comparing dozens of quotes; and (2) misappropriated the database by using a bot to scrape individual quotes generated from the database and made available to consumers on a public website.

Following a bench trial, the judge concluded that Compulife's database was a trade secret, but that defendants had not misappropriated it. He reasoned that defendants had not breached any legal duty to plaintiff and the public availability of the individual quotes automatically precluded a finding of misappropriation.

The Eleventh Circuit vacated the judgment as to the trade secret claims, finding that not all varieties of misappropriation based on "use" require proof of a pre-existing duty under Florida's version of the Uniform Trade Secrets Act. The Eleventh Circuit reasoned that, for instance, when a defendant acquires knowledge of a trade secret through "improper means," use of the trade secret information is still actionable despite the lack of a pre-existing duty. Additionally, the Eleventh Circuit observed that while "Compulife has plainly given the world implicit permission to access as many quotes as is *humanly* possible, . . . using a bot to collect an otherwise infeasible amount of data" may constitute improper means of acquiring trade secret data and left the question to be resolved on remand. The Eleventh Circuit further explained that even if the individual quotes were not protectable trade secrets, "taking enough of them must amount to misappropriation of the underlying secret at some point. Otherwise, there would be no substance to trade-secret protections for 'compilations,' which the law clearly provides."

TIP: The definition of a trade secret can be construed quite broadly, including even, in some circumstances, quasi-public information. Companies gathering competitive intelligence need to make sure information it seeks to gather is not protected and that the manner in which that information is gathered is not "improper."

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