

# Preface

I sometimes thought about writing a book on trade secret litigation law to reciprocate for the many good practice guides on civil procedure and substantive law, written by attorneys and judges, that have been so helpful to me during my career. One California practice guide on civil procedure is so good that citing its text is often more persuasive than a case citation: *Civil Procedure Before Trial* (The Rutter Group), by Judge Robert I. Weil (Ret.), Judge Ira A. Brown Jr. (Ret.), Presiding Justice Lee Smally Edmon, and Judge Curtis E.A. Karnow.

There are already many fine books on trade secret law. However, I thought another book might be useful if it focused in-depth on the law as to three important litigation issues under the Uniform Trade Secrets Act (**UTSA**): (1) Is the information at issue a trade secret under the UTSA? (2) Did the defendant's conduct constitute misappropriation under the UTSA? (3) Is the plaintiff entitled to an injunction, damages, and/or attorney's fees under the UTSA (collectively the **Trade Secret Issues**)? To that end, this book organizes, analyzes, and synthesizes *all* of the 49 UTSA adopting states' published cases (state and federal from 1979 to 2018) that construe the UTSA as to the Trade Secret Issues.

This book is useful despite the new, federal Defend Trade Secrets Act (**DTSA**) for two reasons:

1. The DTSA did not preempt state trade secret law under the UTSA, and many trade secret actions are still being brought in state courts under the UTSA; in those state actions, judges are frequently required to consider any of the 760 out-of-state published UTSA cases in this book that construe the same provisions of the UTSA that are at issue in those state actions. See Chapter 2, section B of this book.
2. UTSA claims are also being filed in most federal DTSA actions, and the federal judges in those DTSA actions are frequently required to consider any of the 760 out-of-state published UTSA cases in this book that construe the same provisions of the UTSA that are at issue in such federal actions. See Chapter 2, section B of this book.

This book makes those 760 out-of-state UTSA cases from the 49 UTSA adopting states readily accessible to lawyers litigating UTSA claims in state court and in federal court due to the *unique* organization of this book. Conceptually, this book is organized into six sections. Sections 1–4 cover the four elements of proof of a trade secret under the UTSA. Section 5 covers the elements of proof of misappropriation under the UTSA, and section 6 covers the issue of remedies under the UTSA. Each section begins with a detailed summary of the law as to that section, based on *all* of the 49 UTSA adopting

states' published cases (state and federal from 1979 to 2018) that construe the UTSA as to that section.

Each detailed summary of the law as to a specific section of this book is accompanied by (online for easy searching) detailed case synopses of *all* of the 49 UTSA adopting states' published cases (state and federal from 1979 to 2018) that construe the UTSA as to that section. Each case synopsis contains the relevant facts of the case and quotes from the case as to the court's analysis, with pincites (page number citations) as to such facts and quotes.

The case synopses as to each section in this book are organized by the type of information involved in the case (e.g., software, customer list, device) and by the industry group involved (e.g., computer industry, medical industry, software industry). The case synopses within such information and industry groupings are further organized into groups of cases where the outcome was favorable to the trade secret owner followed by cases where the outcome was unfavorable to the trade secret owner.

For example, in conceptual section 4 of the book (covering the issue of whether the trade secret owner made reasonable efforts to maintain the secrecy of the trade secret ["reasonable secrecy efforts"]) there are (online for easy searching) detailed case synopses of *every* published UTSA case from the 49 UTSA adopting states (state and federal from 1979 to 2018) where the court found that reasonable secrecy efforts *were* made as to software, followed by detailed synopses of *every* published UTSA case from the 49 UTSA adopting states where the court found that reasonable secrecy efforts were *not* made as to software.

In addition to providing attorneys and judges with an in-depth analysis of UTSA law as to the Trade Secret Issues, this book will facilitate the uniform construction of the UTSA, as required by UTSA section 8, which provides: "This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it."

This book will facilitate the uniform construction of the UTSA due to the readily accessible out-of-state UTSA cases in this book. Due to the unique organization of this book, lawyers and judges can easily review the rulings of other courts in the 49 UTSA adopting states as to the provisions of the UTSA that are at issue in their action and as to the type of alleged trade secret in their action.

Moreover, because most federal courts are looking to UTSA cases to interpret the DTSA, this book will further one of the important purposes of the DTSA: to create uniform federal trade secret law. As stated in the legislative history of the DTSA, "This . . . legislation will provide a *single, national standard* for *trade secret misappropriation with clear rules and predictability* for everyone involved" (emphasis added). Senate and House Judiciary Committee Reports, pp. 14, 6, respectively.