

New York (Common Law)

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Last Modified: 1999-10-26

New York courts universally apply common law definition, following the first Restatement of Torts §757:

§ 757. Liability For Disclosure Or Use Of Another's Trade Secret—General Principle

One who discloses or uses another's trade secret, without a privilege to do so, is liable to the other if

- (a) he discovered the secret by improper means, or
- (b) his disclosure or use constitutes a breach of confidence reposed in him by the other in disclosing the secret to him, or
- (c) he learned the secret from a third person with notice of the facts that it was a secret and that the third person discovered it by improper means or that the third person's disclosure of it was otherwise a breach of his duty to the other, or
- (d) he learned the secret with notice of the facts that it was a secret and that its disclosure was made to him by mistake.

Comment b of the Restatement sets forth six factors courts should consider when determining if a party's information constitutes a trade secret:

- (1) the extent to which the information is known outside of the business;
- (2) the extent to which it is known by employees and others involved in the business;
- (3) the extent of measures taken to guard the secrecy of the information;
- (4) the value of the information to the owner and its competitors;
- (5) the amount of effort or money expended on developing the information; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Comment b also sets forth a "use" requirement. New York courts will likely require a party prove that the alleged trade secret does not relate to a "single or ephemeral" event, but is rather "continuous[ly] use[d] in the operation of . . . business"

[Click here](#) for a full text of the Restatement.

