



# Trade Secrets, Restrictive Covenants, and Unfair Competition

IN TODAY'S DIGITAL AGE, WITH MORE EMPLOYEES WORKING REMOTELY AND LEAVING THEIR EMPLOYERS FOR NEW OPPORTUNITIES, COMPANIES ARE FACING NEW, ADVANCING, AND EVER-EVOLVING TRADE SECRET AND RESTRICTIVE COVENANT CHALLENGES. WE ARE HERE TO HELP.

## What we do

We provide trade secret and restrictive covenant consulting and litigation expertise and advice for clients throughout the United States.

## Why we do it

We believe that in today's business environment, companies need to understand and use all tools at their disposal to protect against trade secret misappropriation, corporate espionage, and losses that stem from the breach of company agreements and policies. We build strategic partnerships with our clients to place them in the best position possible to protect their legitimate business interests and meet their corporate needs.

## How we do it

We work with our clients to develop creative programs and protections that are designed to monitor and prevent trade secret theft, constantly updating our clients on the latest changes to restrictive covenant and trade secret laws, and, when necessary, engaging in offensive or defensive litigation that protects our clients' trade secrets, relationships, and legitimate business interests.

Securing a company's information and protecting its legitimate business interests are more crucial than ever. Without these protections, customer lists can be stolen and misused, product designs usurped and implemented by a competitor, pricing margins and strategic plans made publicly available, sophisticated algorithms and source code improperly downloaded and misappropriated, and other confidential data absconded with and then turned against the company. Thus, the failure to understand, navigate, and confront the depth of these challenges can cause the loss of valuable trade secrets, significant business harm, unwanted media attention, and potential breach of fiduciary duty allegations against management.

**Benesch's Trade Secrets, Restrictive Covenants, and Unfair Competition Group** consists of attorneys from across the country and multiple practice groups (Labor & Employment, Litigation, and Corporate) who understand the importance of protecting a company's valuable information and business interests. Combined, group members have over 100 years of experience in handling trade secret, restrictive covenant, and unfair competition matters. The group works collaboratively to share best practices, stay abreast of and exchange information on legal developments, and learn industry-specific information that enables them to maximize expertise and value when working to address and meet a client's needs and goals. Many of the attorneys in the Trade Secrets, Restrictive Covenants, and Unfair Competition Group are nationally recognized as leading authorities in this area, and commonly write and speak about these matters before bar groups, business organizations, and governmental bodies. They also assist both state and federal legislators in drafting restrictive covenant and trade secret statutes.

The group organizes members around clients so that each client is comfortable with the consistency of representation, and the members are familiar with clients' needs, goals, and business. We also keep clients apprised of significant changes in state and federal law, and regularly conduct no-cost "information sessions" with our clients in order to keep them up to speed on recent legal opinions and statutes that may affect their operations, activities, and trade secrets.



## Trade Secret Consulting

Recent studies estimate that publicly traded companies own approximately \$5 trillion in trade secrets. Studies also show that the economic loss from trade secret theft is between \$209 billion and \$600 billion. No company is immune from trade secret theft, and Chief Executive Officers and corporate boards are looking to their in-house legal departments and outside counsel to help create and implement policies that maximize the protection of trade secrets and reduce the likelihood of trade secret theft. Unlike most law firms, Benesch's Trade Secrets, Restrictive Covenants, and Unfair Competition Group understands the importance of trade secret protection and, as such, has developed packages and programs that are specifically designed to help minimize the risk of trade secret theft and allow clients to receive the full value of trade secret protection. These packages and programs apply regardless of whether the thief is a disgruntled employee, a former business partner, or a competitor.

### **Some of the services Benesch provides for its clients, from small businesses to Fortune 50 companies, include:**

- Assisting clients in conducting trade secret audits to determine the type of information amenable to trade secret protection and the protections that can be put in place to safeguard trade secrets in a manner consistent with the company's structures, goals, environment, and culture.
- Evaluating trade secrets and restrictive covenants as part of the due diligence process in an acquisition, and drafting agreements and implementing trade secret protections after the acquisition closes so that the company receives full acquisition value.
- Creating and implementing trade secret programs and educating employees on trade secret protection.
- Analyzing restrictive covenant and confidentiality agreements in order to assess the enforceability of the agreements.
- Working with clients to gauge and, when necessary, minimize any trade secret or restrictive covenant risk resulting from hiring a competitor's employee(s).
- Providing clients with updates on important developments in trade secret and restrictive covenant law, including changes that necessitate new agreements, changes to data protection programs, and/or revised employee onboarding and separation procedures.

When necessary, group members also works with other Benesch departments and groups, such as the Data Protection and Privacy Group, in conducting forensic analysis to help design trade secret protection programs.



**Given its national footprint**, Benesch's Trade Secret, Restrictive Covenants, and Unfair Competition Group has obtained and defeated temporary restraining orders, preliminary injunctions, and permanent injunctions in state and federal courts located throughout the country, as well as in arbitration and alternative dispute resolution venues (such as FINRA).

## Litigation Services

We understand that there are times when litigation is necessary to protect a client's trade secrets and legitimate business interests, or to fend off unwarranted claims of trade secret misappropriation or restrictive covenant violations. When this happens, and knowing that speed is key in these types of cases, the experienced team of trial lawyers in Benesch's Trade Secrets, Restrictive Covenants, and Unfair Competition Group—lawyers who have litigated trade secret and restrictive covenant matters throughout the United States—jump into action by working with the client and forensic specialists to gather and preserve evidence, notify and work with relevant state and federal authorities, and file (or defend against) actions in state and federal court that seek temporary restraining orders, preliminary injunctions, expedited discovery, and permanent injunctions.

Group members also understand the importance of recovering monetary and non-economic damages in trade secret and restrictive covenant cases and, as a result, have obtained substantial trade secret and restrictive covenant jury verdicts on behalf of their clients. These successes have occurred in a wide range of industries, and for all sizes of companies, including, but not limited to, securities, pharmaceuticals, medical supplies and products, transportation, e-commerce, financial services, retail banking, healthcare, insurance, manufacturing, transportation, brokerage, real estate, and consumer goods. Not surprisingly, we also have an advanced understanding of the legal issues that recur from case to case, such as:

- What constitutes irreparable injury.
- Consideration for, and reasonableness of, restrictive covenants.
- Legitimate business interests needed for the enforcement of a restrictive covenant.
- Inevitable disclosure.
- Electronic discovery and forensic computer analysis.

Knowing that time equals money in trade secret and restrictive covenant cases, Benesch's Trade Secrets, Restrictive Covenants, and Unfair Competition Group is skilled at quickly and aggressively obtaining injunctive relief in time-sensitive situations. Indeed, the fact that our dedicated team members are intimately familiar with companies and their respective industries sets us apart from our competitors. It also allows us the ability to seek enforcement of trade secret protections or restrictive covenants in a fast and efficient manner. Such activities include:

- Investigating the facts and issues of a potential case through interviews and collaboration with forensic and computer experts.
- Issuing cease and desist letters when appropriate.
- Filing suit and seeking an injunction.
- All aspects of expedited discovery.
- When applicable, contacting and working with law enforcement.



## Experience

- Obtained preliminary injunction and affirmance of injunction on appeal for a technology industry client against a former employee and new employer for breach of restrictive covenant and misappropriation of trade secrets.
- Obtained a unanimous jury verdict in favor of a plastics company on the claims of trade secret misappropriation and other business torts filed against the company arising from the manufacture and sale of plastic television housings.
- Successfully obtained preliminary injunctions in multiple courts on behalf of a national medical supply company enforcing noncompete agreements and protecting trade secrets. Obtained a \$2.1 million judgment in one case and obtained a favorable confidential settlement in the second case.
- Represented a \$3 billion trucking management company and several individual defendants (current employees) when the plaintiff, a \$1 billion trucking group, alleged that the individual defendants secretly orchestrated with each other and with the client the immediate mass departure of more than 90% of the plaintiff's regional operation. The plaintiff further alleged that our client used its trade secrets to gain millions of dollars in revenue over the course of three years while purportedly stealing large customers from the plaintiff. The case was settled in our client's favor, with the plaintiff voluntarily dismissing all of its claims against all defendants.
- Represented a clinical technology client in a case against a rival company that misappropriated our client's trade secrets and improperly interfered with its business relationships. Following a two-and-a-half-week jury trial, the jury ruled in our client's favor and issued a \$4.2 million verdict against the competitor.
- Represented a pharmaceutical distributor against two former executives who started a competing business. The case was settled with extensive competitive restrictions and a significant monetary settlement in favor of our client.
- Obtained temporary injunctive relief on behalf of a polymer processing company prohibiting employment of a technical employee by a competitor under the theory of inevitable disclosure. We subsequently achieved a favorable settlement containing significant market restrictions on the competitor.
- Represented a publicly held aerospace manufacturing company against former plant managers and a former supplier who formed a competing business using the client's manufacturing trade secrets. We obtained a preliminary injunction precluding the competitor from manufacturing competitive products that was extended via consent decree along with a substantial settlement.
- Obtained the successful dismissal of a German corporation from a significant trade secret misappropriation and conspiracy lawsuit. Successfully handled the appeal affirming dismissal in its entirety.
- Defended against a preliminary injunction and allegations of breach of contract, illegal use of trade secrets, and general tort claims brought against a food processing and services client. The case was dismissed by the plaintiff after we successfully responded to and defeated the primary claims of the lawsuit.

- Obtained temporary and permanent injunctive relief on behalf of an industrial product distributor in an action against a competitor, which hired away the majority of an entire region's sales force having extensive trade secret information regarding customers.
- Defended and defeated a suit alleging breach of a nondisclosure agreement and misappropriation of trade secrets in which plaintiffs sought to recover \$300 million and the imposition of a constructive trust over patents and other intellectual property.
- Obtained a temporary restraining order and preliminary injunction against an insurance agent for violating restrictive covenants. The case subsequently went to trial, and our client was awarded six figures in damages and attorneys' fees.
- Defeated a temporary restraining order and complaint brought by a national beverage manufacturer against its former Chief Marketing Officer and primary competitor.
- Drafted restrictive covenant agreements for companies in the electronics, healthcare, financial services, insurance, pharmaceuticals, medical sales, and manufacturing industries.
- Procured preliminary and permanent injunctions that enforced restrictive covenant and confidentiality obligations against multiple insurance agents. Cases resulted in a seven-figure settlement for our client.
- Worked with our client and federal authorities to obtain a search warrant for, and obtain client information from, a competitor who illegally hacked our client's computer systems.
- Defended a media organization against breach of restrictive covenant and employee raiding allegations.
- Worked with an insurance company to implement procedures and protocols for spotting restrictive covenant violations and enforcing restrictive covenants in state and federal courts.
- Successfully defended a manufacturing company against an injunction brought by a competitor as a result of hiring the competitor's former business leader.
- Defeated temporary restraining order litigation against a dairy services client accused of raiding a competitor's sales force.
- Obtained a preliminary and then permanent injunction against insurance agents to enforce restrictive covenant and confidentiality obligations.
- Represented a Fortune 100 electronics manufacturer in enforcing a noncompetition agreement signed by its former Chief Financial Officer. The case was successfully resolved after we obtained injunctive relief for the client.
- Obtained a preliminary injunction against a life insurance agent (and the agent's staff) who violated restrictive covenants and stole confidential information.
- Worked with a high-frequency trading firm to enforce restrictive covenant obligations against former traders and senior executives.
- Prosecuted a preliminary injunction on behalf of a pharmaceutical company and against former employees who violated noncompetition agreements.
- Prosecuted restrictive covenant violations before the American Arbitration Association on behalf of a credit card processing firm and against a former salesperson. Obtained injunctive relief and a six-figure arbitration award.
- Represented a Fortune 500 logistics company in litigation against the former owners of an acquired company for corporate espionage, improper acquisition of computer software, and breach of noncompetition agreements. The case resulted in a permanent injunction in favor of our client and a seven-figure settlement payment to our client.
- Negotiated the turnover of confidential information and subsequent restrictive covenant restrictions on behalf of a food services client and against former employees who left the company to begin a competing business.
- Represented a financial institution before a FINRA arbitration panel regarding theft of confidential information by former employees.
- Developed a process for a financial services company to protect confidential information.
- Procured enforcement of a restrictive covenant against a former salesperson of a processing company.
- Represented a commercial products manufacturer in defeating a temporary restraining order and preliminary injunction brought by a competitor alleging misappropriation of trade secrets and employee raiding.
- Obtained a temporary restraining order and preliminary injunction against an insurance agent for violating restrictive covenants. The case subsequently went to trial, and we obtained a favorable monetary settlement before the case was submitted to the jury.

- First-chaired two separate trade secret and restrictive covenant actions against former insurance agents that resulted in jury verdicts and a subsequent attorney’s fees award in favor of our clients.
- Represented a commercial insurance carrier in defeating a temporary restraining order brought against a carrier by a competitor alleging employee raiding and misappropriation of trade secrets.
- Defeated a temporary restraining order brought by a former employer (commercial products manufacturer) against two employees who left to form a competing business.
- Represented a financial institution before FINRA in order to enforce nonsolicitation and noncompetition agreements signed by former employees. Obtained a seven-figure award from FINRA.
- Successfully prosecuted a preliminary injunction on behalf of a healthcare company and against a former employee who violated his noncompetition agreement.
- Secured a preliminary injunction against multiple agents and a competitor for illegally accessing computer systems and misappropriating trade secrets.
- Defeated a temporary restraining order and preliminary injunction motion brought by the former president of a financial services company.
- Counseled senior executives and high-net-worth individuals regarding noncompetition, nonsolicitation, and other restrictive covenant provisions contained in various separation agreements.
- Served as lead counsel in trade secret, contract, and related business torts litigation claiming over \$10 million in damages in the Northern District of California for an e-commerce client.
- Defended a senior business leader in an American Arbitration Association dispute over violation of an employee nonsolicitation clause.
- Defended medical sales representatives against allegations of restrictive covenant violations.



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