

Intellectual Property  
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Trade Secret Handout Number #2

Religious Technology Center v. Wollersheim, 796 F.2d 1076 (9<sup>th</sup> Cir. 1986)  
[excerpts with footnotes removed]

FACTS

The Church of Scientology teaches that a person's behavior and well-being are improved by removing "engrams" from the unconscious mind. Engrams are impressions recorded by the unconscious mind in times of trauma in this life or in previous lives. Engrams return in moments of similar stress to the detriment of the person's behavior. Removing engrams from the unconscious permits the person's analytical mind to function unhindered.

Engrams are located and purged through "auditing." Auditing uses the "technology" and "advanced technology" of the Church. An "auditor" directs a set of structured questions and drills ("rundowns") at the Church adherent. The adherent's responses are measured on a "Hubbard E-meter" which reflects changes in "skin voltage." The auditor's aim is to detect the "buttons" which indicate a conscious or subconscious response to the rundown and enable the adherent to identify his or her engrams. The adherent must proceed through a series of increasingly sophisticated technologies of closely structured questions and answers to reach "a higher spiritual existence."

The Church asserts that the unsupervised, premature exposure of an adherent to these materials will produce a spiritually harmful effect. The Church keeps the higher level materials in secure places, and makes the materials available only to adherents who agree in writing to maintain their confidentiality. The Church stated to the district court that it does "not safeguard these materials from any commercial consideration."

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Defendant David Mayo was apparently at one time a close associate of Church founder L. Ron Hubbard, and assisted in the preparation of the Church's higher level materials. Following an acrimonious dispute between Mayo and other senior Church officers, Mayo left the Church and, in July 1983, established the Church of the New Civilization. The new church embraces beliefs and provides counseling and training to its adherents which are essentially identical to those offered by the Church.

In December 1983, Robin Scott, and two others (all of whom are unrelated to this action) stole certain higher level materials from Church offices in Copenhagen, Denmark. Danish authorities subsequently convicted Scott of burglary. While the stolen materials were returned, the Church maintains that copies were made and that the new church later acquired these copies. The district court found that the higher level materials offered to its adherents by the new church are "essentially identical" to the stolen Church materials.

The present suit was filed on November 4, 1985. The Church states that, in late October 1985, it learned that the new church intended to disseminate the contents of the materials stolen by Scott "in a non-confidential setting."

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In supplementary findings of fact, the district court stated that it "views this as a stolen document case." The court recognized that both parties accepted that adherents must be exposed to the materials in strict progression. On this basis, the court concluded that Church adherents may suffer irreparable harm from the unsupervised dissemination of the materials, thus justifying preliminary injunctive relief. In additional comments from the bench, the district court held the materials to constitute a misappropriated trade secret but noted that the Church was not arguing commercial disadvantage as an injury.

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## II. *Can Religious Materials Constitute a Protectible Trade Secret?*

The Church's complaint included several pendent California state law claims, including misappropriation of trade secrets. . . . "The maintenance of standards of commercial ethics and the encouragement of invention are the broadly stated policies behind trade secret law." . . . States may regulate trade secrets only to the extent that state law does not conflict with federal copyright and patent laws. [\*Kewanee\*, 416 U.S. at 479.](#)

. . .

The district court held that the Church's higher level materials were a trade secret. The court relied heavily on the Church's concededly elaborate efforts to maintain the secrecy of its materials. However, the Church's contention that the disputed materials are "religious scripture" was not reconciled with the California statute's reference to "economic value" as an element of a protectible trade secret.

. . .

To be protectible as a trade secret under either Restatement section 757 or the new California statute, the confidential material must convey an actual or potential *commercial* advantage, presumably measurable in dollar terms. We do not accept that a trade secret can be based on the *spiritual advantage* the Church believes its adherents acquire over non-adherents by using the materials in the prescribed manner.

. . .

[California law states:] "'Trade secret' means . . . information . . . which is secret and which is not generally available to the public, *and which gives one who uses it an advantage over competitors* who do not know of or use the trade secret." (Emphasis added) See [\*People v. Serrata\*, 62 Cal. App. 3d 9, 22, 133 Cal. Rptr. 144, 152 \(1976\)](#) ("The phrase 'advantage over competitors' [in Cal. Pen. Code § 499c] refers to any form of *commercial advantage*." (emphasis added)).

In its supplementary findings of fact, the district court noted that the new church offers its services to its adherents at a price "substantially less than that charged by the Church." However, the Church alleged no competitive market advantage from maintaining the secrecy of its higher level materials. Indeed, to do so would raise grave doubts about its claim as a religion and a not-for-profit corporation. Rather, the Church alleges that its precepts require adherents to be audited in a structured manner with exposure to higher level materials only when the auditor considers the adherent ready. The injury inflicted on the Church by the new church's misappropriation of its "secret" is the "religious harm" that would be suffered by Church adherents from premature unsupervised exposure to the materials. The value of the confidential materials is thus spiritual not commercial, and the materials cannot be said to have the "independent economic value" necessary to qualify as a protectible trade secret.

## III. *Conclusion*

The Church was not entitled to an injunction . . . under California trade secrets law. We therefore dissolve the injunction forthwith.

REVERSED.

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Do you agree with the 9<sup>th</sup> Circuit that the scriptures cannot qualify as a trade secret? Did the founders of the new church get any advantage out of having the stolen materials? What type of advantage was it? If you had represented the Church of Scientology, could you have argued the case differently? In thinking about these questions, compare:

The Uniform Trade Secret Act (excerpt on page 36 of the casebook);

The Restatement of Torts (excerpt on page 42-43 of the casebook); and

The Restatement Third of Unfair Competition (excerpt on page 47 of the casebook)