

Introduction to Trade Secrets

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Trade secrets, or confidential technological and commercial information, are the most important assets of many businesses. The law protects trade secrets as alternatives to patents and copyrights.

What is a trade secret?

Trade secrets have no precise definition; but to be protected by the courts, they must be secret, substantial and valuable. The secret can be almost anything as long as it is not generally known in the trade or industry to which it applies. A trade secret provides its owner with a competitive advantage. It may be a formula, process, know-how, specifications, pricing information, customer lists, supply sources, merchandising methods or other business information. It may or may not be protected by other means.

Unlike patents and copyrights, trade secrets have no time limitations. A trade secret, however, has value only while it remains secret. For instance, a trade secret may lose its privileged status when it is ascertained through reverse engineering or when it is discovered independently. A trade secret revealed in these ways can be used without any obligation to the trade secret's originator or owner.

If a trade secret is unlawfully obtained — for example, by breach of trust or violation of a confidential relationship — the courts could award the trade secret's owner compensation for damages suffered and forbid the infringer use and further disclosure of the trade secret.

What to do?

Step 1: Determine what is to be treated as trade secrets.

All the information gathered in developing, improving, manufacturing or selling a product cannot be labeled as a trade secret. Much of it will represent nothing more than skill or well-known principles and practices of industry. While courts ardently protect an owner's rights to his trade secrets, they also guard, with equal vigilance, an employee's right to carry his skill and experience from one employer to another or to a business of his own.

Step 2: Protect trade secrets.

A master register of proprietary, or private information, and who has access to it should be established and constantly maintained. Those who have access to that confidential information must know precisely what is secret. Employee education is imperative. Many trade secrets can be lost through inadvertent disclosure or simple ignorance of their importance to a company.

Limited disclosure of a trade secret, however, is necessary before the benefits of the secret can be enjoyed. Such exposure must be restricted to those who absolutely need to know the secret.

Coca-Cola Company keeps the ingredients list and the mixing and brewing formulas for Coke locked in an Atlanta bank vault. Only two senior chemists at the company know the combination, and the vault can be opened only after a special vote by the company's directors.

If a company expects others to take its trade secrets seriously, it must set up a trade secret protection program. Employees, manufacturer representatives, consultants, suppliers, customers and licensees should be contractually bound to obligations of confidence. In addition, visitor access to sensitive areas should be restricted.

No one protection plan applies to all situations. A particular Trade secret's character will dictate the protection it needs.

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