TRADE SECRETS LAW AND THE NEW BUSINESS OWNER OR ENTREPRENEUR

Freedom to compete is at the heart of a free-enterprise system. An important element of your competitiveness is having a method, formula, process, etc., that is unique to you making your product more attractive than those of your competitors. Trade secret law is designed to protect that method or formula thus fostering an environment where there is innovation and investment in creating this information.

A "trade secret" is a piece of information, including a formula, pattern, compilation, program, device, method, technique or process that derives independent economic value – actual or potential – from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. La. R.S. § 51:1431(4) (Louisiana Uniform Trade Secrets Act ("La UTSA"). The United States began to recognize trade secrets in the 19th century due to the technological advances of the time.

A variety of tools can form the basis of a trade secret including formulas, recipes, patterns, compilations of data, computer programs, devices, methods, techniques, processes, systems, or other form or embodiment of economically valuable information. One item that cannot be a trade secret is a corporation's profit and loss statement. *Autocount, Inc. v. Automated Prescription Systems, Inc.*, 651 So.2d 308 (La. App. 3 Cir. 1995).

For a business tool to be elevated to the level of a trade secret, it must meet several requirements. **First**, it must be information in some definite, but not necessarily tangible, form. **Second**, it must have economic value from not being generally known. In other words, the information is not available to the general public and trade community. **Third**, the information is subject to reasonable secrecy measures such as advising employees of the existence of the trade secret, limiting access to it, and possibly requiring employees to sign covenants against using confidential information. Unreasonable measures include public disclosure of materials through display, trade journal publications, or advertising; disclosure to persons who have no duty to keep the information confidential; voluntarily revealing trade secrets under a sales agreement or not keeping the information subject to access codes to restrict access in a computer system.

Misappropriation of a trade secret occurs when a properly maintained secret is acquired by an improper person who knew or should have known that the secret was improperly acquired. A trade secret can be improperly acquired through theft, bribery, misrepresentation, breach or inducement of a breach of duty to maintain the secret, espionage, or through other means.

Just as there are improper methods of discovering trade secrets, there are proper means by where the person discovering the secret will not be exposed to liability. These include discovery by independent invention, discovery by starting with the known product and working backwards to find out how it was developed (also known as "reverse engineering"), discovery under a license from the other of the secret, or observation of the item in public use or on display.

Damages for misappropriation of a trade secret range from damages including actual losses and unjust enrichment damages, injunction relief, and attorney's fees.

Trade secrets should not be confused with patents which grant the exclusive right to the owner to exclude others from the manufacture, use or sale of a product for a certain amount of time in exchange for a complete disclosure of the information necessary to make the product that is being patented. Trade secrets, on the other hand, last only as long as they are protected.

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