

## PROTECTING YOUR BUSINESS SECRETS

In large, high tech business world, news about corporate espionage and theft of trade secrets sounds like the stuff of spy novels and movies. But even those of us with small businesses have business secrets worth protecting. The more successful your business, the more likely it is that your competitors will seek information about your business that can help them compete. It's important for you to understand the law regarding trade secrets and how to protect them.

What is a trade secret? Many states have adopted a statute known as the "Uniform Trade Secrets Act." This model statute sets forth a widely accepted definition of a trade secret: "information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) derives independent economic value, actual or potential, from not being generally known to, and not been readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (2) is the subject of efforts at a reasonable under the circumstances to maintain its secrecy."

What does that definition mean in English? It simply means that a trade secret is any private information regarding your business that would be valuable to outsiders, that gives you an economic advantage over your competitors, and that you have taken reasonable steps to protect. You no doubt have a number of trade secrets, such as customer lists, training manuals, financial records, contracts with distributors, and the like that would be very valuable to your competition. The law will protect you if this information is stolen or otherwise misappropriated so long as you have taken reasonable steps to protect the information.

It is generally pretty easy in trade secrets litigation for a company's lawyer to establish the value of and economic advantage associated with a company's private information. It is oftentimes more difficult to convince a court that the private information is secret. In determining whether information is "secret," a court will attempt to learn the extent to which the information is known outside the company and, most importantly, the extent to which the company has taken measures to guard the secrecy of the information. If a company has not taken

steps to protect its private information, the court will not do it for the company. Therefore, it is important for you to be sure that your company has policies designed to keep its private information private.

There are a number of simple, inexpensive things that you can do to protect your trade secrets:

- Have a written policy telling your employees that information about your company is private and shouldn't be disclosed to outsiders. Consider having key employees sign a non-disclosure agreement.
- If you store confidential information on your computer, secure that information with a password or some form of encryption to ensure that the information is available only to those who need to see it.
- Use a stamp to mark private paper documents as "Confidential." Keep your private documents in a locked file cabinet.
- Use a document shredder, instead of the wastebasket, for disposing of confidential documents.
- If you have to share confidential information with outsiders, have them sign a confidentiality agreement.
- Have employees sign non-competition agreements. This will prevent a key employee from going to a competitor where confidential information could be used.
- If an employee, who has had access to confidential information, joins a competitor, have your lawyer send a letter to the competitor reminding them of your former employee's confidentiality obligations.

Remember, even your company's most valuation may and will not be given trade secret protection unless you have taken steps to protect that information.

Michael P. Coyne