SQUIRE PATTON BOGGS

Venture Law Meetup Series
Trade Secrets

What are Trade Secrets?

In essence, a trade secret is any piece of information, such as a formula, pattern, compilation, program device, method, technique or process, that is both:

- **Valuable because it is kept secret.** The information is or could be economically valuable at least in part because it is not known by others, or able to be discerned by others, who otherwise could benefit economically from using or disclosing it.
- **Protected by efforts to maintain secrecy.** It is protected by reasonable efforts to maintain its secrecy from others.

Famous trade secrets include the formulas for Coca-Cola and WD-40, Google's algorithm and *The New York Times* Bestseller List.

Other examples of trade secrets may include:

- Study/trial data
- Code or software
- Manufacturing processes
- Customer lists
- Marketing plans

In identifying trade secrets, helpful questions may include:

- What information gives your company an advantage over your competitors?
- Is there information about your business that you would not want to be known by anyone outside the company?
- What are the valuable pieces of information within each department?
- What does your legal counsel advise regarding the types of trade secrets that typically exist within your industry?

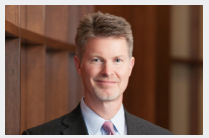
Failing to take **reasonable efforts** to protect information may invalidate future legal claims.

What Are the "Reasonable Efforts" You Can Take to Protect Your Trade Secrets?

- Identify a trade secret inventory
  - Identify information that may be protected and the risks associated with losing it
- Have processes and procedures in place to keep your trade secrets secure
  - Limit access to sensitive information to those who "need to know"
  - Require both non-dislcosure and non-competition agreements with entities and individuals who will be exposed to the information **before** a trade secret is disclosed
  - Demand immediate return of company property and information upon termination of business discussions/termination of employment
  - Store trade secrets separately and securely
    - An intruder should not be able to get all information to recreate your product from the same server or the same location
    - If your product is manufactured in a region of the world known for economic espionage, have key components of your production, especially those that give you a competitive advantage over others, conducted in a different region of the world
  - A culture of security should be driven by management, and all employees should understand and be involved in creating and maintaining your culture of security
- Recognize potential threats
  - Be on the lookout for both internal and external threat indicators
- Have a Response Plan
  - Response time is critical; know what to do before anything goes wrong
  - Have a plan on paper in case access to computers is disrupted
  - Establish a point of contact (preferably in the legal department)
  - Keep updated contact information for an Incident Response Team:
    - Outside counsel, forensic investigators, PR firms and law enforcement
- Call the Federal Bureau of Investigation (FBI)
  - The FBI has flexible resources to help in a variety of situations, even in preventative matters
  - The FBI may be able to bring criminal charges in certain circumstances

Contact the local field office at www.fbi.gov/contact-us/field

Contacts



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