



Gary Michael Smith, Esq.

Trade Secrets: Protecting Your Assets

Although it frequently goes unrecognized, almost every business has some form of intellectual property worth protecting. While almost everyone recognizes patents, trademarks and copyright as intellectual property, the concept of trade secrets as intellectual property remains elusive. Business owners are often surprised to learn what valuable property they have in trade secrets and, are stymied by efforts to protect them.

Before discussing how to protect a trade secret, it is best to define it. A trade secret can be described as knowledge not generally known in the trade that derives for its owner some independent economic value about which the owner has used reasonable efforts to maintain as secret. Wow! That was a mouthful. Okay, here are some examples: your customer lists, your non-patented recipe for the product you manufacture, or a particular methodology for approaching your business. In other words, a trade secret can be the stuff that the public is not aware of that gives you some special advantage over your competition.

Worthy to note also is what a trade secret is not. By definition, a trade secret cannot be something you have patented, trademarked or copyrighted. Why? Because none of those are SECRET. When you file for copyright, trademark or patent, you are expressly doing so to place the world on notice about your special something. Those are the antitheses to trade secret.

Okay, so why is it worth protecting? Well, I hate to answer a question with a question, but I think this will make the idea concrete. Would the manufacturers of Coca Cola™ want to share the recipe for their beverage with the manufacturers of Pepsi™? Not on your life! That recipe is an unpatented, closely guarded trade secret. It is THE source of value for them in their

industry. So, is a hundred million dollar secret recipe worth protecting? You bet it is!

But I'm not Coca Cola™ you say? Alright, but do you have a customer list? Of course you do. And would your competitors kill for the chance to directly solicit all of your customers in an effort to undercut your price? Probably so. Well then, so what if you aren't Coca Cola™? You have an asset worth protecting.

Here are some key steps to help protect your trade secrets:

- First, recognize that you have a trade secret.
- Limit the sharing of your trade secrets to a "need to know" basis, and never show a trade secret to anyone unless they have signed a nondisclosure or confidentiality agreement.
- Tell your employees what information your company regards as trade secrets, and require them to sign nondisclosure agreements.
- Add a trade secret protection policy to your employee manual (and, yes, enforce it).
- Restrict the duplication and dissemination of trade secret documents, and make certain they are always stamped "trade secret" or "confidential."
- Keep secret materials secure, including restricting their location and accessibility on your computer network.
- Don't publish your trade secrets in any external documents, such as public filings, applications, advertising, product manuals, etc.
- If your secrets are ever sought in a court proceeding, ask the judge to issue a protective order and to seal the record before you make your disclosure.

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Gary Michael Smith, Esq. is a published author, judge pro tempore, and a principal of Smith & Craven P.L.L.C., a law firm based in the Scottsdale Airpark whose primary practice focus is businesses and the construction industry. To contact Gary Michael Smith, call (480) 222-2225, or visit www.smithcraven.com.

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