

Gavel to Gavel: Protecting trade secrets

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Your company has worked for years and spent millions of dollars on a project unknown to anyone outside the business. It's only reasonable to take steps to protect the project's valuable data. That includes establishing whether or not the information is subject to the protections offered under the Uniform Trade Secrets Act.

Before you can protect a trade secret, you must understand the criteria for defining a trade secret. A trade secret is information that derives independent economic value from not being known or generally ascertainable by competitors and is subject to reasonable efforts to protect its secrecy.

Ask yourself if the information is known outside the business and if it's generally known to employees. If you answer yes to either of these questions, you may not be able to protect the information as a trade secret.

Review what steps have been taken to protect the information as well as the information's value to the company and its competitors. You also need to evaluate the effort spent developing the trade secret and whether it can easily be duplicated or acquired.

A key element when looking at trade secrets is the company's reasonable protection efforts. This can start with marking documents confidential and restricting access to those who have a need to know. A company might also institute password protection for electronic files and require employees with access to the information to sign a confidentiality agreement.

Patent protection is another protective device to consider.

The Uniform Trade Secrets Act provides protections against misappropriation, which is the wrongful acquisition or disclosure of a trade secret. Misappropriation can include actions ranging from industrial espionage to the hiring of an employee to obtain confidential information.

The UTSA also provides remedies for violations. Injunctive relief can include requiring the return or destruction of information containing the trade secret, or even barring the competitor from using the information. Monetary damages can include payment of lost profits, unjust enrichment and royalty payments. If the trade secret is in the public domain by the time the decision is handed down, however, it may be too late for a court to provide the original owner with effective protection or adequate compensation.

An attorney can be a great resource in helping you to formulate a plan for protecting these valuable assets.

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