

PSST! CAN YOU KEEP A (TRADE) SECRET?

By Arnold Winter

Would your business suffer if your confidential business information were released to your competitors, or if an employee took such information to a new employer or started a competing business using this information? Do you need to share such information with employees or contractors and other business partners in the first place while making sure that the information is used only as you intend? If so, then you need to know how to keep a (trade) secret.

Size doesn't matter. Small businesses and sole proprietors, too, may have certain commercially valuable trade secrets.

A "trade secret" can be information, knowledge, know-how, methods, techniques, customer information, or similar intangibles that benefit your business and give you a competitive advantage as long as their confidentiality is preserved. In fact, an entire business can be built around a single trade secret. A famous example is the Coca Cola formula.

Earlier in 2004, Pennsylvania passed the **Uniform Trade Secrets Act** (UTSA) which specifically lists the following examples of trade secrets: "formulas, drawings, patterns, compilations (including customer lists), programs, devices, methods, techniques, or processes." Notably, "customer lists" was expressly added to the Pennsylvania version of the UTSA.

The USTA provides legal remedies against any "misappropriation" of trade secrets. Misappropriation means that someone got hold of your trade

secrets through "improper means," disclosures or use of the trade secrets without your consent, or outright theft.

Depending on the circumstances, remedies include injunctions, court orders requiring certain acts to protect the trade secrets, money damages (which may be doubled "[i]f willful and malicious misappropriation exists"), and "reasonable attorney fees, expenses and costs to the prevailing party."

Certain misappropriations of trade secrets may even be punishable as felonies. This includes electronic thefts from "any computer, computer network or computer system."

However, **protection under trade secrets law is not automatic!** Instead, your secrets are safe only if you make reasonable and consistent efforts to guard them. These efforts might include **written agreements with employees and contractors, company policies and procedures, and physical security measures.**

Incidentally, legal action under the USTA "for misappropriation must be brought within three years after the misappropriation was discovered or by the exercise of reasonable diligence should have been discovered."

Overall, a lawyer experienced with trade secrets law and general business matters can help you guard your commercially valuable trade secrets.

Providing entrepreneurial legal services to business clients, Arnold Winter practices law in Media, PA, as a partner in Lipton, Weinberger & Husick. For more information, please call (610) 891-6910 or visit www.LawWinter.com.

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