



It's Not a [Trade] Secret if Everyone Knows

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A trade secret is information, whether a formula, pattern, compilation, program, device, method, technique or process, etc., used by a business that gives it an economic advantage over its competitors who are not legally privy to or use that trade secret. The United States Patent and Trademark Office defines trade secrets as a type of intellectual property (amongst the other types: patents, trademarks, and copyrights).

Knowing whether your company has a trade secret or not is important, so you can take measures to protect this very valuable asset. Once your company inadvertently or improperly discloses your trade secret to a third-party or the public, those intellectual property rights may be lost under the Uniform Trade Secret Act ("UTSA"), common law, or the Defend Trade Secrets Act of 2016 (DTSA). If you adequately protect your company's trade secrets and discover that an individual or organization has impermissibly revealed, obtained or used that trade secret, you might be able to hold that other individual or organization liable in a civil case under DTSA (which recently increased protections for holders of trade secrets) for trade secret misappropriation, which is the unauthorized disclosure and use of confidential information.

For example, the recipe for a secret sauce or signature drink, a unique search algorithm, a company's secret client lists, the safety data sheets for a cosmetic, all may be considered trade secrets. Also, patents before registration or after expiration can retain secrecy if they are protected as a trade secret. You may not know your company has trade secrets that need protection. We recommend your company contact an attorney today to ensure your company is protecting these valuable assets.

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