

Module 3

Part 3

Trade Secret

❖ Definition

- ▶ A trade secret is a formula, practice, process, design, instrument, pattern, or compilation of information used by a business to obtain an advantage over competitors or customers
- ▶ In some jurisdictions, such secrets are referred to as "confidential information"
- ▶ A company can protect its confidential information through non-compete non disclosure contracts with its employees
- ▶ The sanctioned protection of such type of information from public disclosure is viewed as an important legal aspect



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❖ Definition

❖ Discovering and protecting of trade secret

- ▶ A company typically invests time and energy (work) into generating information regarding refinements of process and operation
- ▶ If competitors had access to the same knowledge, the first company's ability to survive or maintain its market dominance would be impaired
- ▶ **Trade secret = "Special knowledge" = Intellectual property**
- ▶ Trade secrets are not protected by law
- ▶ Trade secret is protected without disclosure of the secret

▶ There are three factors that are common to all such definitions

- is not generally known to the relevant portion of the public;
- confers some sort of economic benefit on its holder (where this benefit must derive specifically from its not being generally known, not just from the value of the information itself);
- is the subject of reasonable efforts to maintain its secrecy.

- ▶ Thus, if a trade secret has been acquired via industrial espionage, its acquirer will probably be subject to legal liability for acquiring it improperly
- ▶ The holder of the trade secret is nevertheless obliged to protect against such espionage to some degree in order to safeguard the secret
- ▶ A trade secret is not deemed to exist unless its holder takes reasonable steps to maintain its secrecy

❖ Discovering trade secrets



- ▶ Companies often try to discover one another's trade secrets through lawful methods of reverse engineering on one hand
- ▶ And less lawful methods of industrial espionage on the other
- ▶ Acts of industrial espionage are generally illegal in their own right under the relevant governing laws
- ▶ If a trade secret is acquired by improper means, the secret is generally deemed to have been misappropriated

❖ Protecting trade secrets



- ▶ Trade secrets are by definition not disclosed to the world at large
- ▶ Instead, owners of trade secrets seek to keep their special knowledge out of the hands of competitors through a variety of civil and commercial means
- ▶ Which is the employment of non disclosure agreements (NDA) and non-compete clauses
- ▶ A worker will sign an agreement not to reveal his prospective employer's proprietary information

- ▶ Often, he will also sign over rights to the ownership of his own intellectual production during the course (or as a condition) of his employment
- ▶ Violation of the agreement generally carries stiff financial penalties
- ▶ Similar agreements are often signed by representatives of other companies with whom the trade secret holder is engaged, e.g. in licensing talks or other business negotiations

- ▶ Trade secret protection can, in principle, extend indefinitely and in this respect offers an advantage over patent protection, which lasts only for a specifically delimited period, for example twenty years in the U.S.
- ▶ For example, **Coca Cola** has no patent for its formula and has been very effective in protecting it for many more years than a patent would have
- ▶ However, the "downside" of such protection is that it is comparatively easy to lose and comes equipped with no minimum guaranteed period of years