

THE BACKGROUND

- Trade secret refers to any confidential business information such as formula, process, design, instrument, pattern, commercial method or compilation of method which provides an enterprises a competitive edge in business.
- The twentieth century witnessed two broader revolutions: the rapid pace of technological advancement and the globalization
- These two agents have the conflicting impact on trade secrets

LEGAL REQUIREMENTS

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- 1 • The foremost requirement to be a trade secret is that the information must be undisclosed
 - 2 • Trade secret have to have a commercial value
 - 3 • The owner of the trade secret necessarily have taken reasonable cautions to remain it secret

ISSUES IN TRADE SECRETS

Nondisclosure Agreements

Non-compete Agreements

Infringement

Enforcement



NONDISCLOSURE AGREEMENTS

- In order to protect the trade secrets and other confidential information, companies go through **non-disclosure or confidentiality agreements**
- While entering into an agreement with confidentiality terms, two major issues require to be considered
 - (a) Consideration of the value of the disclosed information
 - (b) The duration of the non-disclosure and restricted use of the trade secret that one must be willing to be considered

NON-COMPETE AGREEMENTS

- Under the **non-compete agreement** one party (i.e., the employee) consents not to engage in or initiate a related business similar to previous one or compete with the other party which is typically the employer.
- **The agreement has dual-benefits:** on the one side it controls the employees from leaving the job, and on the other side protects the confidential information from disclosure, i.e., safeguards the trade secrets.
- This **prevents employees from revealing the classified business information** or trade secrets to the competitors.

INFRINGEMENT

- Through ‘reverse engineering’ (authorized method of duplicating a technology that commences with an existing product and works in the reverse direction) or ‘employees’ poaching’ (processes that involve hiring from the rival firms), corporations frequently try to explore rival firms’ trade secrets
- Companies also resort to potentially illegal methods to discover competitors trade secrets including ‘industrial espionage’ (theft of trade secrets through hidden and illegal practice of spying competitors to achieve a commercial advantage)

ENFORCEMENT

- Legal protection against stealing and misappropriation is granted to the information which qualifies as a trade secret, conditioned that the owner has appropriated the essential steps to safeguard the confidentiality
- Misappropriation is the obtaining of trade secrets through inappropriate means
- Accordingly, if trade secret is obtained through **industrial espionage, the acquirer is liable to legal action and harsh penalty**

ADVANTAGES OF PROTECTION

- Trade secret protection entails no registration costs
- It is not a limited right that is constrained by time period
- Trade secrets are instantaneously effective
- Registration with the government is not required nor the disclosure of the confidentiality is needed
- Trade secrets grant competitive advantage

PROBLEMS IN PROTECTION

- Reverse engineering poses threat to the protection of trade secrets when the secret is embodied in a product
- Trade secret protection is not awarded if it is publicly revealed
- Protection of trade secret is subject to inappropriate attainment and use or disclosure of the secret information
- Trade secret protection is weaker than the patents protection

TRADE SECRET LAWSUIT

- In the later half of 2014, the court case was instigated by **health software company Epic Systems** in the district court at Wisconsin in the United States
- **Tata Consultancy Services and Tata America International Corp (the US division) were charged** of blatant theft of trade secrets, secret information, texts, credentials and data by the Epic Systems
- The Epic Systems accused the Tata Consultancy Services for utilizing some the classified codes to set up '**Med Mantra**' a competitive software product for hospital management system

SHIFT IN THE CASE

- Nevertheless, the lawsuit was more concentrated on how a Tata Consultancy Services worker illegitimately accessed the ‘User Web’, the internal records database of the Epic Systems
- And less about whether the Med Mantra was created with inputs from Epic Systems or not

THE VERDICT

- TCS was found guilty of the infringement of trade secret by the United States grand jury
- Two fines were imposed on the TCS company and its American arm
- A total of \$ 940 million of fine was imposed to the TCS of which \$240 million was to be paid to the Epic Systems in damages and an additional \$700 million for penalizing damages

TCS CLAIMS

- Tata Consultancy Services denied the infringement of IP and said that it will go for an appeal
- The jury's verdict on responsibility and damages was unanticipated by the TCS, but it also said that it respects the legal process
- TCS' next course of action will be to forcefully challenge the jury's verdict into the higher courts through appeal

CONCLUSION

- Trade secrets protection is **more weaker** than any other IP protection as the **entire secrecy** is in the hand of one person
- Non-disclosure Agreements and Non-compete Agreements are the **potential ways** to protect trade secrets
- However, infringement persist through **illegal industrial espionage**
- Trade secrets have become more valuable in the globalised era