

Trade Secret Law

Analysis of Trade Secret Law

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Introduction

Each successful business needs some sort of quality that sets them apart from the other guys. Without this, there would be no competition. Some business might have low pricing to attract customers, while others have a specific secret, such as a recipe or a formula. Think back to the cartoon, *Spongebob Squarepants*. In numerous episodes, Plankton, the owner of a failing restaurant competitor to the Krusty Krab, is determined to obtain the Krabby Patty Secret Formula. This formula is the reason for the Krusty Krab's success and is well guarded so that Plankton (or any other competing restaurant) can never obtain it. The Krabby Patty Secret Formula is what's known as a trade secret.

Part One

According to the United States Patent and Trademark Office (2020), a trade secret has three requirements: it must have any independent economic value by being kept a secret, it must have value to other parties that cannot legally and legitimately obtain it, and there must be reasonable measures in place in order to keep it from others. This has a similar objective to a patent, however, it does not expire and is not required to be registered under the USPTO to be valid. As long as it satisfies those three requirements, it is protected under trade secret law. The USPTO points to two laws that are aimed at protecting trade secrets: The Economic Espionage Act of 1996, and The Defend Trade Secrets Act of 2016 (This is discussed in Pt 2). The Economic Espionage Act (EEA) (1996) is broken down into two parts. The first part intends to address the theft of trade secrets in order to "benefit any foreign government, foreign instrumentality, or foreign agent." The second part prohibits trade theft in commercial

businesses, preventing anyone from profiting off of another business's trade secrets. The act also defines penalties for violation of trade theft, including imprisonment, or fines.

Part Two

The EEA is a broad overview of what is prohibited in regard to trade secret theft. The Defend Trade Secrets Act of 2016 (DTSA) (2016) refines the EEA, allows for the victim to bring forth a civil suit, and defines how evidence of theft is handled by the courts. In Section 2, the law specifies that the victim may file a civil suit against any party that is accused of trade secret theft. This suit may result in "injunctive relief, compensatory damages, and attorney's fees." It also specifies that the evidence in court must remain confidential, due to the nature of trade secrets. Section 3 of the act increases the penalty for trade secret theft to greater than \$5 million or three times the value of the stolen secret. Under this section, economic espionage and trade secret theft are added to the list of offenses defined as racketeering. Section 4 specifies that the Department of Justice must submit a report to congress biannually, and this report must show all instances of trade secret theft outside of the U.S. Section 5 further defines trade secret theft to congress, how they're harmful, and how to handle seized information. In Section 6, it specifies that the Federal Judicial Center must develop best practices for seizing and securing information, in regard to trade secret theft. Section 7 protects any individual who discloses a trade secret confidentially to a government official or attorney. That party is immune from civil or criminal litigation due to this disclosure.

Part Three

In Michigan, we have our own statute regarding the misappropriation of trade secrets. The Michigan Uniform Trade Secret Act of 1998 (MUTSA) prohibits any misappropriation of a business's trade secrets. It defines misappropriation as someone knowingly acquiring a trade secret without the proper means, or knowingly disclosing a trade secret to external parties. The act describes a trade secret as any information that has economic value to the business it belongs to by being kept a secret, and must have reasonable measures in place to prevent the secret from getting out into the public. If a party is found guilty of misappropriating trade secrets, the court issues an injunction to the defendant party. The court will most likely order the defendant party to stop distributing or using the trade secret. The court may also order the party to pay a hefty settlement to the plaintiff party through damages and attorney's fees.

Part Four

Marc and Bernard, who are using their employers trade secrets for their own company, would most likely be found guilty of violating several laws regarding misappropriation of trade secrets. First, they would be in violation of federal law. Specifically, they would be in violation of the Economic Espionage Act of 1996. They knowingly used another company's trade secrets, which provide a competitive advantage over other companies, and directed customers from that company to their new company. This will most likely result in a loss of profit from the victim company. If they were to be prosecuted for it, they may serve jail time or be forced to pay fines under the EEA. Because of this, the company would also be able to file a suit against Marc and Bernard, under the Defend Trade Secrets Act of 2016. Under this, Marc and Bernard may also be forced to pay injunction, damages, and attorney fees to the company they stole from. They may also be found guilty of racketeering, under this law. They also would have broken the Michigan

state statute regarding the misappropriation of trade secrets, The Michigan Uniform Trade Secrets act of 1998. Similar to the DTSA of 2016, this would require them to pay damages, attorney fees, and injunction towards the victim company. The court may also order them to stop using the trade secrets. It is also possible that they would be prosecuted for fraud, for starting the company under their wives' names in order to avoid detection. This action would raise suspicion and may aid in the court finding Marc and Bernard guilty of misappropriation.

References

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