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UNDERSTANDING TRADE SECRETS

Every business has its secrets that it wants to protect. However, some secrets are more important than others. For example, a business may want to keep the name of its accountant or distributor a secret to prevent its competition from learning about a great resource but that kind of secret is not protected by trade secret laws. Trade secrets are confidential and specialized pieces of information that are unique to the business and important to its profitability. As such, the law provides special protections for trade secrets.

What is a Trade Secret?

The law defines something as a trade secret if it is not generally known to the public, a business uses reasonable efforts to maintain its secrecy, and the secret confers an economic benefit from the information being maintained as a secret. A trade secret can be a formula, process, design, practice or other type of information. The secret recipes of grocery products and restaurants are usually considered trade secrets as are the confidential process for making certain goods, for example.

Deciding How to Protect Your Business Secrets

Trade secrets are protected differently than other types of intellectual property such as patents and trademarks because the value of a trade secret is that the information remains confidential. Filing the information with the U.S. Patent and Trademark Office would violate that confidentiality and take away the value of the trade secret. While a patent would prevent others from using the information during the life of the patent, it would become useable by competitors at the end of the patent period. A trade secret, on the other hand, does not expire and the information remains solely for the use of the company keeping the trade secret indefinitely.

How to Protect Your Trade Secret

Since trade secrets cannot be protected by the U.S. Patent and Trademark Office, businesses must come up with different ways to protect their trade secrets. It is typically employees who have access to trade secrets so businesses often require their employees and contractors to sign confidentiality or non-disclosure agreements. If an employee, or contractor, violates the agreement then they will likely face significant financial penalties.

Enforcing Trade Secrets

If a business believes that a trade secret has been violated then the business may be able to bring a lawsuit pursuant to state law. The majority of states have passed the Uniform Trade Secrets Act to deal with trade secret violations. However, some states, including New York, have not passed the Uniform Trade Secrets Act. New York, for example, relies on common law to enforce trade secrets.

Remedies for trade secret violations include both injunctive relief and financial damages. A court can order a defendant to stop using a plaintiff's trade secret and to make efforts to maintain the

confidentiality of the information. Damages may include compensation for the economic harm that the plaintiff endured and, in extreme cases, punitive damages.

Trade secrets can be very valuable to businesses who are reasonably assured that they can keep their secret confidential. Therefore, the law recognizes the right of a business to keep trade secrets and provides remedies for trade secrets that were wrongfully obtained.

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