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FOCUS ON: LAW



GUEST COLUMN | STACEY NAKASIAN

Protecting trade secrets

SUCCESSFUL BUSINESSES secure patents for their inventions, trademarks for their brand designations and copyrights for their original works, but they sometimes overlook a fourth category of intellectual property: trade secrets. Many companies fail to take the steps needed to “qualify” their trade secrets for the protections afforded them under state and federal law.

The first step in protecting a company’s trade secrets is to identify what information associated with the company’s business constitutes a trade secret. Broadly stated, a trade secret is information that derives value from the fact that it is not generally known or readily ascertainable and that would be of economic benefit if available to the company’s competitors. Examples of information that may qualify as a “trade secret” are a company’s confidential marketing or pricing strategies, business plans, technical information about products or products in development, and financial information. However, this information is not a trade secret if it can be obtained or derived easily from public sources.

For example, assume company A sells equipment used by dentists. A list of its customers and prospects would likely not be a trade secret because anyone could obtain a list of dentists in company A’s sales region by a simple internet search. But if company A’s customer list included specific information about particular dentists’ needs, preferences and purchasing history, the list likely would qualify

as a trade secret because it would not be readily ascertainable from public sources.

Once the categories of trade-secret information have been determined, companies must take affirmative actions to protect that information. Unlike patents, trademarks and copyrights, there is no regulatory scheme by which a company can register its trade-secret information to ensure its protection. Rather, to ensure that proprietary information qualifies for trade-secret protection, a company must be able to show that it takes reasonable efforts to maintain the secrecy of the information.

At a minimum, companies should adopt and publish policies defining and prohibiting the use or disclosure of trade-secret information. Companies also should restrict access to this information on an “as-needed” basis and segregate the information in locations or files designated “confidential” or password protected.

Both state and federal law recognize and protect a company’s rights to its trade secrets by providing specific remedies against the misappropriation or unauthorized use of trade secrets.

The remedies include the ability of the trade-secret owners to obtain an immediate court order prohibiting ongoing use or disclosure of the trade secrets by an alleged infringer. A company that proves misappropriation of its trade secrets can recover the losses it incurred from misappropriation and, if more than its own losses, the benefit enjoyed by the infringing party’s use of the information. Alternatively, the court could require the infringing party to pay the company a reasonable royalty for the use of its trade secrets.

Trade-secret laws exist to ensure a company’s investment in their development of proprietary business information is not wrongfully exploited by a third party. However, courts will only apply this protection where it is clear the company has treated the information as a trade secret. Therefore, businesses must proactively identify their trade secrets and adopt – and vigilantly implement – policies and practices to maintain the secrecy of their information. ■

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