

CONCEPT OF TRADE SECRETS IN INDIA

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DOI: 10.5958/2249-877X.2021.00108.9

ABSTRACT

The researcher's goal with this article is to clarify India's legislative framework for trade secret protection. Because in the age of globalization, every company's unhappiness or success is dependent on its secrets whether they be strategy-related secrets or customer information trade secrets are becoming more important. Trade secrets provide a competitive advantage in the commercial world, and as a result, one must guarantee that his or her business-related private knowledge is properly protected from rivals. The purpose of trade secret legislation is to protect, maintain, and promote business ethics and reasonable transactions, as well as to urge modernisation. Since the advantages of the information economy have been rapidly increasing, trade secrets have become the Intellectual Property of Choice. So, in order to attain competent simplicity in commercial transactions, it is essential to outline the laws necessary to properly protect trade secrets in India, as well as for the smooth operation and fair competition of a business in the market. The researcher is attempting to emphasize the rules governing trade secrets in India via this study report. Furthermore, a conclusion will be offered based on case law examples in order to alleviate the inadequacies that trade secret owners confront. The practical scenario will evaluate how the law defines trade secrets, how it protects them, and the suggested measures.

KEYWORDS: *Confidential, Intellectual Property, Legislation, Trade Secret.*

1. INTRODUCTION

Trade secrets are a kind of intellectual property that a company owns. A trade secret, unlike a patent, is not openly recognized. Any business exercise or advancement that is generally not known outside of the firm is considered a trade secret. Information considered a trade secret provides the business with a competitive advantage over its competitors and is often the result of internal development. Any classified commercial information that gives a venture a fair frame of reference may be deemed a trade secret.

Mechanizing or industrialized secrets, as well as mercantile secrets, are examples of trade secrets. Secrets of this kind are known as confidential information in certain countries. Unofficial use of such knowledge by people other than the owner is deemed unethical and a violation of the trade secret. The protection of trade secrets is either based on specific requirements or case law on the security of private information, or it is based on the general principle of protection from excessive competition[1].

Trade secrets may take a variety of forms, such as a proprietary process, equipment, design, plan, procedure formula, scheme, or practice that is not visible to others and can be utilized to create a project that offers a competitive advantage or adds value to customers. Trade secrets are defined differently depending on the jurisdiction, but they always have the following characteristics:

- This is not public information;
- Their owner benefits financially from their secrecy.
- Their secrecy is carefully guarded.

Under article 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, often referred to as the TRIPS Agreement, these three characteristics define a trade secret under international law.

Trade secrets are the "classified papers" of the business sector, much as limited texts are carefully guarded by government agencies as classified information. Companies are enticed to summarize what makes their competitors successful due to the high expense of creating specific inventions and processes that are much more expensive than acceptable intelligence. In order to protect its trade secrets, a business may require employees who have access to the knowledge to sign non-compete or non-disclosure agreements (NDA) when they join.

There are many instances of both physical and ethereal trade secrets. Google Inc.'s search algorithm, for example, is protected as intellectual property in policy and is regularly updated to improve and protect its maneuverability. Coca-secret Cola's formula, which is kept in a basement, is an example of a trade secret that is a method or recipe. It has never been revealed since it is not patentable. A procedural trade secret is an example of the New York Times Bestseller list[2].

While the list does appear in book sales as a result of aggregating chain and independent shop sales, as well as wholesaler data, the list is more than just sales figures (books with inferior general sales may make the list though a book with upper sales may not).

Example: An SME develops a process for developing its produced products that allows it to produce them in a more cost-effective manner. This method provides the company a competitive advantage over its competitors. As a result, the company in issue may value its know-how as a trade secret and not want competitors to learn about it. It ensures that only a small number of individuals are aware of the secret, and those who are aware of it are made aware that it is private. When working with other parties or licensing its know-how, the company executes confidentiality agreements to ensure that all parties understand that the information is confidential. In such circumstances, an opponent or any third party embezzling the knowledge would be considered a breach of the venture's trade secrets[3].

2. DISCUSSION

2.1 Misappropriation:

On the one hand, companies attempt to find out one other's trade secrets via legal methods such as reverse engineering or staff poaching, and on the other side, illegal tactics such as industrial espionage. Acts of commercial monitoring are generally illegal in and of themselves under the relevant laws, and the penalties may be severe. The importance of that irregularity in trade secret law is that if a trade secret is acquired via unethical methods, it is generally assumed that the information has been embezzled.

As a result, if a trade secret is acquired via industrial espionage, the person who obtains it may face legal consequences for doing so illegally. (On the other hand, the owner of a trade secret is obliged to protect the secret to some degree from such espionage.) A trade secret is not deemed to exist under most trade secret laws unless its alleged owner takes reasonable measures to maintain its secrecy.

2.2 *The Importance of Protecting Trade Secrets:*

A business's trade secret is the most important positive characteristic that allows the company to maintain its reputation and market position. There is no need that a business be a large industry to get trade secret protection.

- i. *Recent technology:* As we all know, computers and other systems are being extended to keep information hidden, although it was previously stored in tangible forms. A thief had to go through many stages in order to acquire knowledge from this bodily form, after which he could use that information inappropriately. With the increased skills, however, gaining access to the hidden knowledge has become much easier. The file that has collected in the computer system may be encrypted, password protected, and only workers with a need-to-know basis have access to it. If an employee needs to contact that information from the computer network, he may easily download it, email it, publish it on the internet, or just save it to a flash drive and walk out the front door undetected with thousands of documents in his hand. Trade secrets have no place in the digital world. Hackers nowadays get into networks and obtain sensitive information from companies, including trade secrets, in ways that no one expects. In 2002, the FBI dealt with almost 1,500 hacking instances, whereas in 2010, it dealt with 2,500. Philip Gabriel, aka "Stakkato," was recently charged with five charges of embezzlement of trade secrets. In this instance, he is accused of hacking into secured computer systems at Cisco Systems and NASA, including NASA's Advanced Supercomputing Division, from a distance of 5,000 miles. Peterson, a 16-year-old Swedish, is accused of carrying out the hackings[4].
- ii. *Increasing value of trade secret information:* Trade secrets, like all other intellectual property, are growing more valuable and play an increasingly important part in the country's prosperity. This approach is also acceptable for Trade Secrets, according to the Congressional Research Service: "As the United States continues to transition to a facts-based economy, household businesses' dynamism and competitiveness are becoming more reliant on their know-how and intangible assets. A trade secret is a kind of intellectual property that protects confidential information. Previously, the economy was based on tangible assets such as natural resources and capital goods, but with the development of modern industries, the economy today assesses itself using intellectual property[5].
- iii. *Increased international hazards:* There are dangers not only on a local level, but also from foreign organizations, businesses, and governments, which contributes to the importance of trade secrets to a significant extent. The globalization of business is mostly to blame for rising risks on a global scale. When a business operates on a global scale, the risk of misappropriation rises. New technology is another factor contributing to rising worldwide risks. Hackers may get access to any information from anywhere in the globe. They just need PCs that are connected to the internet. The case of Xiang Dong "Mike" Yu, a project engineer for the Ford Motor Company, who smuggled Ford Trade Secrets to China while on a job hunt that led to an agreement with one of Ford's competitors, is one of the most recent instances of trade secret theft.

- iv. *The USTA*: One of the reasons for a rise in trade secrets and trade secrets lawsuits is the USTA's development. The widespread adoption of USTA has increased awareness of trade secret law among attorneys, businesses, courts, and others, as well as increased confidence in the applicability of trade secret law and other laws. Prior to USTA, there was a great deal of variance across the states on a variety of trade secret problems, ranging from the kinds of behavior to the remedies. The USTA isn't perfect, but it provided a starting point for enacting legal punishments for trade secret theft[6].
- v. *Numerous sources of litigation*: In the current indistinguishable economic environment, and especially in highly liquefied and spirited knowledge-based industries, there are numerous possibilities for trade secret-based litigation, such as if a company's endurance is jeopardized, its members will be stimulated to imperfection. This will be an additional risk for an endangered business, which would previously have been considered insignificant, and it will be seen as more important. As a result, the business will devote more resources to defending its rights than before.

2.3 Keeping Commercial Secrets Safe:

The practice of maintaining and protecting sensitive information as a trade secret, which embraces employee hiring and termination procedures designed to protect confidential knowledge. Before employing a future employee who has been contractually bounced or otherwise restricted by previous employers as to private topic matter, carefully examine the hidden liabilities. Also, discuss the scope of the restrictions on future use of the employer's private and proprietary information with all departing workers.

The employee's contract of employment should include a nondisclosure clause that spells out the subject matter areas that the employer considers secret. It's also a good idea to include a contractual clause that places reasonable restrictions on a former employee's competitive activity after he or she leaves. If the limitation is fair in terms of length, geographic breadth, and scope, it will usually be enforced by the courts[7].

Allow employees access to confidential information only if they have a "need to know" justification. Areas containing private information should be separated from areas with open access, with limited access available only to those who have a need to know the information. Additional security measures, such as electronic security, passkeys, or even color-coded identification badges, may be used to restrict access to such sensitive locations.

Employees must maintain constant vigilance to ensure that confidential information remains private. This may be accomplished via the use of signs and strategically positioned instructional messages. Many ideas conceived by other parties constitute trade secrets, even if they are not patentable subject matter. While the independent creator or initiator may be completely unaware of the law of trade secrets, most thinking people recognize the value of the idea and, more often than not, exaggerate it.

However, the one who surrenders the idea is not simply persuaded to do so, and instances have been shown in which revival has been achieved against the unsuspecting receiving firm on the grounds of a breach of a private relationship or abuse of a trade secret.

2.4 The Need for Information Confidentiality:

To assert a trade secret defense, the trade secret's information or subject matter must be kept hidden or private. If a trade secret is revealed to a non-company employee, the ability to protect

it as a trade secret may be jeopardized unless it is carefully modified and controlled, if feasible, by a formal agreement or nondisclosure contract. As previously stated,

An employer should take the steps outlined below to manage the breadth and type of trade secret materials sent to its workers, as well as the circumstances and degree to which employees may gain access to such information[8].

2.5 Legal Aspects of Trade Secrets Protection India is one of the world's most populous:

Fair play along with honesty is the corporate world's strength. It can only be accomplished by defending trade practices. Except for trade secrets, every kind of intellectual property in India is governed by specific laws. India's legislature has not enacted any trade secret legislation. Apart from India, all members of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) have laws protecting trade secrets. Because there is no suitable legislation for trade secret protection in India, trade secrets are the most segregated sector. In India, trade secrets are protected by Section 27 of the Indian Contract Act, 1872, which provides for solutions and prohibits anybody from revealing any knowledge obtained through service or via contract[9].

However, there is just a universal treatment and no criminal remedies under this requirement. To be classified as a Trade Secret, any information must be highly confidential, according to this clause.

- The employee's prominence and the nature of his job.
- The nature of the information itself.
- Whether the information could be easily isolated from other information that the employee was free to use.

In 2008, an attempt was made to circumvent the National Innovation Act, 2008 in order to protect trade secrets in India. The Indian Innovation Act of 2008 is generally modeled on the American Competitiveness Act. One of the primary goals was to codify and combine privacy laws in order to better protect private information, trade secrets, and modernisation[10].

2. CONCLUSION

The purpose of trade secret legislation is to protect, maintain, and promote business ethics and fair transactions, as well as to urge modernisation. The law for safeguarding trade secrets is based on the common law of unfair competition, which was developed by English courts in the nineteenth century. Since the advantages of the information economy have been rapidly increasing, trade secrets have risen to become Intellectual Property of Choice. Unlawful use of such knowledge by anyone other than the owner is considered unethical and a violation of trade secrets.

The real proprietor of the trade secret would suffer harm if the secret was revealed. Trade secrets are data or information about a company that is not generally known to the public and that the owner reasonably challenges to keep hidden and confidential. Once trade secrets have been made public, they cannot be recovered, even if the usage of the product causes the disclosure.

If a trade secret is exposed during the process of utilizing it, there will be no defense. As a result, in order to accomplish the competent simplicity in commercial transactions, it is essential to outline the law in order to properly protect trade secrets in India, as well as for a company's excellent performance and fair competition in the market. Obtaining security will aid the growth of the country's business. As a signatory to the Agreement on Trade Related Aspects of

Intellectual Property Rights (TRIPS), India has previously enacted laws to protect all intellectual property rights, such as the Copyright Act, Trademark Act, and Patent Act, but trade secret legislation has yet to be enacted. India is need to lay forth detailed laws and regulations in order to remove any doubts about Trade Secrets Protection. As a result, there is a need for trade secret protection.

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