“In Confidence” – Putting In Place A Trade Secret Protection Program

Dan Greif – Siam Premier International
Trade Secrets!!!
What is a Trade Secret?

- Not generally known
- Confers an economic benefit to the owner
  - Economic benefit comes from secrecy
  - Not from the value of the information
- Owners takes reasonable steps to keep secret
- Continues as long as secret
What can be a Trade Secret?

- Special suppliers
- Product specifications
- Purchase prices
- Test data
- Key raw materials
- Technical drawings
- Laboratory notebooks
- Salary structure
What can be a Trade Secret?

- Formulas
- Compilation of information
- Technical information
- Manufacturing process
- Marketing/Sales strategies
- Management processes
- Software for business
- Financial information
- Customer list
Famous Trade Secrets --
COCA-COLA “Secret Formula?”
Famous Trade Secrets – KFC Recipe?
Famous Trade Secrets – WD-40 Liquid?
Famous Trade Secrets – Burger King Special Sauce?
Famous Trade Secrets – Google Algorithm?
Trade Secret Law

- Promotes ethics and fair dealing

- Incentive for innovation –
  - Safeguards time/investment
  - Alternative to patents
  - Use when no other IP

- Prevent “free ride” by competitors
Advantages -- Disadvantages

- **Advantages --**
  - Inexpensive
  - No disclosure
  - Can last forever
  - Effective immediately

- **Disadvantages --**
  - Can be discovered
  - Protects only improper acquisition
  - Weak form of protection
  - Someone else can patent
Limitations of Trade Secrets

- Independent invention allowed
- Reverse engineering allowed
- Legal receipt of trade secret allowed
- Ex employees take it
- Current employees expose it
- Once discovered – protection lost
Trade Secret Management

- Identify trade secrets
- Create policy – Implement by:
  - Physical controls
  - Administrative controls
  - Technical controls
- Educate employees – Written Agreements
- Avoid hiring where non compete
- Departing employee processes
Trade Secret Management

- **Written trade secret agreements**
  - Reasonable restrictions
  - Non analysis clause
  - No raiding clause

- **Restrict trade secrets**
  - Only need to know
    - Labeling
      - CONFIDENTIAL
      - MAKE NO COPIES
      - COVERED BY NON-ANALYSIS AGREEMENT
  - Secure area
  - Access control

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Trade Secret Management

- Telephones – Employees; outside calls
- Faxes
- Computers: e-mails
- Photocopying
- Shredding – Waste bins
- Internal communications
- Loose talk
- Protect disclosure by partners
- License software

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Trade Secret Misappropriation

- **How it happens** –
  - Unlawful access -- theft, fraud, coercion
  - Knowing acquired illegally
  - Innocently acquiring -- learning stolen
  - Breach of contract

- **Theft examples** --
  - Industrial espionage
  - Targeted spying
  - Computer theft
  - Network attacks
  - Bribery of employees
  - Internal theft

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Trade Secret Laws

- **Specific Trade Secret Law** –
  - Myanmar will have
  - Thailand has

- **Unfair competition Law**

- **Tort Law – Misappropriation**
  - Judge made common law

- **Contract Law** –
  - Best to get contract
  - Provides great certainty
  - Clauses –
    - Non-disclosure
    - Confidentiality
    - No reverse engineering

- **Criminal Law**
  - Reluctance to pursue criminally

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Trade Secret Laws

- **Steps** –
  - Confirm trade secret
  - Owner -- take all steps to maintain secrecy
  - Establish breach
  - Infringement/competitive advantage gained

- **Remedies** –
  - Court order issuing injunction
  - Court order for monetary compensation
  - Precautionary impoundment
  - Seizure order
  - Destruction order
  - Punitive damages
  - Criminal actions
Trade Secret Audit

- Conduct periodically
- Identify and record all trade secrets -- Interview
  - R & D
  - Manufacturing
  - IT
  - Marketing
  - Sales
- Confirm ownership
- Verify trade secrets processes followed
- Make certain third party trade secrets not disclosed
- Refine policies/ processes with HR
COCA-COLA “Secret Formula”
COCA-COLA “Secret Formula”

After 125 yrs, secret Coke formula is out

Since it was first made in 1886, the Coca-Cola formula is one of the most fiercely guarded trade secrets of the corporate world. Many claimed to have found it, but the mystery of Molasses Mix, the name given to the combination of secret ingredients which gives the soft drink its distinctive taste, has endured.

Now an American public radio show claims to have found the recipe kept in an ‘Mystery was marketing tool, P.26’.

Atlanta-based radio show, with the slogan ‘Think of us as your in-house marketing department’, published the photo of the book containing a hand-written replica of the original recipe on February 8, 1889.

### Mystery Mix

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<tr>
<th>Ingredient</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Water</td>
<td>2.5 pints</td>
</tr>
<tr>
<td>Lemon juice</td>
<td>20% of juice</td>
</tr>
<tr>
<td>Water</td>
<td>20% of juice</td>
</tr>
<tr>
<td>Cinnamon</td>
<td>8 oz</td>
</tr>
<tr>
<td>Vanilla</td>
<td>2 oz</td>
</tr>
<tr>
<td>Salt</td>
<td>1 oz</td>
</tr>
<tr>
<td>Nutmeg</td>
<td>1 oz</td>
</tr>
<tr>
<td>Cinnamon</td>
<td>1 oz</td>
</tr>
<tr>
<td>Sugar</td>
<td>20% of juice</td>
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### Recipe

1. Mix all ingredients.
2. Cool to room temperature.
COCA-COLA “Secret Formula”
“BRAETZ” Trade Secret Case
"Mattel's specific allegations regarding trade secrets were that several of their employees ... defected to MGA and disclosed Mattel's trade secrets. By contrast, MGA's trade-secret claim rested on allegations that Mattel's employees stole MGA trade secrets by engaging in chicanery (such as masquerading as buyers) at toy fairs," Kozinski wrote. "That both Mattel and MGA claimed they stole each other's trade secrets isn't enough to render MGA's counterclaim compulsory."
Coca-Cola Marketing Secretary Case

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Trade Secrets Revealed

• Comments
• Questions

Thank you