

Protecting Trade Secrets

by Victoria Brown, Primmer Piper Eggleston & Cramer PC

Most businesses maintain valuable information that, if disclosed, could result in a competitive loss. This information can include manufacturing processes, marketing programs, customer lists, product specifications, and formulas. If a company takes appropriate measures to ensure that its valuable information meets the definition of a “trade secret” under Vermont law, then it can obtain injunctive relief or recover damages if the information is misappropriated.

Vermont law defines a trade secret as information that is 1) valuable because it is not generally known or reasonably ascertainable and 2) subject to reasonable efforts to maintain its secrecy. If someone misappropriates a trade secret, a court may enjoin that person from using the trade secret and may require the person to pay damages to the owner of the trade secret.

A 2001 Vermont case illustrates that, if a business does not protect its valuable information, it can be left with no remedy if that information is taken by another. Over many years, a lodge owner developed a list of tour groups who had become valuable customers. The lodge hired a couple to coordinate tour group marketing. When the couple left the lodge several years later, they opened a competing inn, using the lodge’s customer list to solicit the very same tour groups. In the inn’s first season, nine of its 11 tour groups had initially booked at the lodge, but then cancelled and booked instead at the inn. The lodge cried foul and sued, claiming that the inn had misappropriated its customer list, a valuable trade secret.

While the court agreed that the customer list had an economic value — meeting the first part of the trade secret definition — it found that because the lodge failed to maintain the secrecy of the list, it could not invoke the remedies of the Vermont Trade Secret statute. For example, the lodge had no agreement or understanding with its employees that the customer list should be kept confidential; it did not take measures to keep the list in a secure place or to

restrict access to it; and it allowed tour group names to be posted on a reservation board visible by all employees and office visitors.

Here are some guidelines to ensure your information meets the definition of a “trade secret.”

Develop a trade secret policy. This should define your trade secrets and describe measures for keeping them secure. It does not have to be lengthy or elaborate; a simple policy to be followed will be more effective than an overly complex policy that is ignored.

Communicate the policy to your employees. You should incorporate the policy into your employment contracts or have employees without contracts sign an acknowledgment that they have read the policy. Make sure employees understand what information you consider to be trade secrets. Conduct exit interviews with all departing employees to retrieve company documents and to reiterate their continuing obligation to keep trade secrets confidential.

Limit access to the trade secrets. Only those employees who need to know your trade secrets should have access to them. Label trade secret documents confidential and keep them securely locked in a separate filing cabinet. Use passwords to protect computerized data. Take care that secret information is not displayed at your office or disclosed to the public.

Use non-disclosure agreements for third parties. When it is necessary to share your trade secret information with third parties to pursue mutually beneficial business ventures, use non-disclosure agreements in which the third parties acknowledge that they are receiving confidential information and that they agree to keep it confidential and return it at the end of the consultation.

Courts have held that heroic efforts to protect trade secrets are not necessary. Nor should a company treat all company information as a trade secret. Rather, a

company should identify what types of information are valuable because they are not known by competitors, and then implement reasonable and consistent measures to protect that information from disclosure. •

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