What is the Definition of a Trade Secret Under Federal Law?



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Understanding the definition of a trade secret under federal law is crucial for businesses looking to protect their valuable information. Trade secrets are also defined by state law. While there is no single, universal definition of a trade secret across all states, most states have enacted a version of the Uniform Trade Secrets Act (UTSA), which serves as a model for state statutes. Here's what you need to know about trade secrets under the UTSA and federal law.

Definition Under the Uniform Trade Secrets Act (UTSA)

The UTSA provides a framework for defining trade secrets that most states have adopted in some form or fashion. According to the UTSA, a trade secret is information that can include a wide range of data, such as formulas, patterns, compilations, programs, devices, methods, techniques, or processes. To qualify as a trade secret, this information is valuable because of secrecy and it is protected by efforts to maintain secrecy.

- **Valuable Because of Secrecy**: For information to be protected as a trade secret, it must be secret and derive economic value from its secrecy. This value is often tied to the competitive advantage that the secrecy of the information provides.
- **Protected by Reasonable Efforts to Maintain Secrecy**: To ensure that information remains a trade secret, access to it should be limited to individuals who "need to know." This includes employees, contractors, vendors, and business partners. Those with access should be contractually prohibited from disclosing the information. Businesses often use specific agreements to protect their trade secrets and confidential information, such as confidentiality provisions and non-competes.

Definition Under the Defend Trade Secrets Act (DTSA)

The DTSA, which amends the Economic Espionage Act (EEA), incorporates a definition of trade secrets that is closely aligned with the UTSA. According to the DTSA, trade secrets encompass a wide range of information types, including but not limited to financial, business, scientific, technical, economic, or engineering information. This can include:

- Patterns, plans, and compilations
- Program devices and formulas
- Designs and prototypes
- Methods, techniques, and processes
- Procedures, programs, or codes

The DTSA specifies two main criteria for information to qualify as a trade secret:

- **Efforts to Maintain Secrecy**: The owner must take reasonable steps to keep the information secret.

- **Economic Value from Secrecy**: The information must derive independent economic value from not being generally known or readily ascertainable by others who could obtain economic value from its disclosure or use.

The current definition under the DTSA differs slightly from the EEA's original wording by specifying that a trade secret's economic value is contingent upon it not being known or easily discovered by "another person who can obtain economic value" from it, rather than simply "the public."

Definition Under Common Law and the Restatements

Before the widespread adoption of the UTSA, trade secrets were primarily defined by common law, which remains relevant today, especially in states that have not adopted statutory protections for trade secrets. Courts sometimes refer to the Restatement of Torts and the Restatement (Third) of Unfair Competition for guidance on common law definitions. The Restatement of Torts defines a trade secret as business information that provides a competitive advantage to those who are not aware of it or not using it. Examples include chemical compounds, customer lists, manufacturing processes, formulas, and patterns. The Restatement (Third) of Unfair Competition expands on this by defining a trade secret as valuable, confidential information that provides an economic benefit, actual or potential, over others.

Judicially Recognized Examples of Trade Secrets

Before the DTSA, trade secret protection was largely determined by state law, and even now, state law plays a significant role. This means that what qualifies as a trade secret can vary across jurisdictions. However, some types of information commonly recognized as a trade secret by courts include:

- Marketing plans
- Commercial drawings
- Recipes
- Sales data
- Manufacturing processes
- Chemical formulas
- Detailed customer information

How These Laws Fit Together

Given that the DTSA is largely modeled after the UTSA, federal courts interpreting trade secret definitions under the DTSA often look to state interpretations for guidance. This results in a somewhat consistent analysis between federal and state claims. For example, courts have generally found the trade secret definitions under the DTSA and various state laws to be "functionally equivalent," as seen in several federal cases.

Conclusion

Understanding the nuances of what constitutes a trade secret under the DTSA and state laws is essential for businesses looking to protect their proprietary information. While federal law provides a broad framework, state interpretations and common law traditions still play a crucial role in shaping trade secret protection.

This is becoming more important as artificial intelligence plays an ever-increasing role in the process of creation. Trade secrets have emerged as a valuable form of intellectual property protection for areas that may have been traditionally thought of as patentable. The intersection of trade secrets and technology are hot areas for litigation.

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