

October 10, 2019

Trade Secrets: How Do I Protect Them? (Part 2)

When considering whether to maintain an idea as a trade secret, you have several factors to consider:

- Can the new technology be kept confidential and effectively used? For example, can the technology be effectively used in a closed and secure facility?
- Is the technology innovative or is it an obvious application of existing technology?
- Will use of the new technology by others be easily detectable?

Maintaining Trade Secrets – Protective Measures to Implement

While maintaining an idea secret seems simple on its face, there are several factors and measures to implement to ensure the strongest protection possible.

1. **Only Disclose the Secret on a “Need to Know” Basis.** Only people who truly have a need to know the trade secret information – for example, to perform their job – should be given access to the trade secret information.
2. **Maintain a Written Statement of Your Trade Secret Policy.** Your trade secret policy should be in writing and provided to employees so they are on the same page. The trade secret policy should describe the type of information that the company safeguards as a trade secret. The absence of a written trade secret policy may be persuasive evidence that information was not in fact treated as a trade secret. A business should be certain that all employees with access to trade secrets are instructed in the actions they are to take to ensure the secrecy of the confidential information to which they have access.

Related Practices

Fund
Grow
Sell
Start
Venture Capital & Private Equity

3. **Treat Trade Secret Information Different from Other Information.** Trade secrets, inherently, must be kept secret. As such, trade secrets should be kept physically separate from other information, and employees who have (and need) access to the trade secret information should be prohibited from discussing the secret information outside secure areas.
4. **Implement Physical Security Measures.** If you have not done so already, you should implement security measures (e.g., passwords, locks, etc.) to physically deter access to your trade secrets. Such actions may provide critical demonstrative evidence to show a court that affirmative actions have been undertaken to safeguard confidential information. As with any data these days, your trade secrets should be protected by strong passwords and other measures.
5. **Trade Secret Documents Should Be Labeled.** To help deter improper dissemination of trade secret documents, all such documents should be labeled with a proprietary notice and employees should be instructed as to the meaning of such designation.
6. **Remind Employees and Third Parties of Their Confidentiality Obligations.** Employees should be reminded – on a regular basis – of your company’s security procedures and their individual obligations to maintain the secrecy of trade secrets.
7. **Proactively Require Non-Disclosure Agreements.** As explained in Part 1, non-disclosure agreements are an important aspect of protecting your trade secrets when others need to know part or all of the trade secret. This applies to third parties (e.g., vendors) as well as your employees. For employees, they must understand that you have granted the employee access to trade secret information, that your company actively protects the information, and that they must report any unauthorized disclosure or use of trade secret information.
8. **Conduct Exit Interviews with Departing Employees.** An exit interview provides you with an opportunity to remind a departing employee of their obligation to refrain from misappropriating or disclosing trade secret information. This interview also provides your company with an opportunity to collect all documents, security passes, notes, and other items that pertain to the trade secret.
9. **Restrict Access to the Business Property.** To help restrict access to trade secret information, you should limit the public’s access to areas containing its trade secrets. You should not allow visitors to meander through your facility unescorted. Have a formal procedure implemented for visitors, which may include requiring visitors to sign a confidentiality agreement. Any tours you offer to third parties should be careful to avoid the disclosure of proprietary information.
10. **Screen Presentations.** Publications, press releases, speeches, seminars, and trade show displays are a great way to showcase how you are innovative and different from the competition. However, you must be careful not to disclose any information that would give your competitors an opening to independently develop what you have worked hard to implement and protect.

Related People**Aaron Nodolf**

Partner

aknodolf@michaelbest.com

T 262.956.6536

Aaron Nodolf

Partner

aknodolf@michaelbest.com

T 262.956.6536