Protecting Trade Secrets

What do you do when a key employee leaves and you believe he/she has taken your company's trade secrets to a competitor? Or when a strategic business partner uses your trade secret information to compete against you?

The likelihood of recovering damages, or securing injunctive relief, in these instances will depend on the steps that were taken to identify and protect trade secret information prior to the breach. As many businesses have learned, deficiencies in their trade secret protection approach can become glaringly obvious in hindsight, and may even prevent recovery of damages or injunctive relief. This is a truly a situation in which an ounce of prevention is worth a pound of cure. Failure to adequately protect trade secret information may also amount to an actionable breach of an officer’s duty to the corporation.

There are two common scenarios in which trade secret information is typically lost. The first scenario occurs when court-ordered strategic partners or customers. In the rush to impress such parties, too much information may be shared needlessly, or without confidentiality agreements are executed as a matter of course, without legal review, usually due to time constraints. In other cases the process may be easier to manage — for example, in the process in which the process is implemented in software. In such cases, the focus is on protecting the code and preventing code decompilation, even to the point of implementing critical portions of code in a separate firmware device or hard logic. Each situation is specific, requiring a specific technical approach to protection. This is where technically competent legal counsel can make a tremendous difference in creating an effective, streamlined approach to protecting valuable trade secret information.

Once the plan is in place a monitoring system should be implemented. The results of the monitoring should be reported at the executive level, along with a risk assessment that identifies any individual or entity that represents a risk. Appropriate mitigation should be implemented in software. In such cases, the focus is on protecting the code and preventing code decompilation, even to the point of implementing critical portions of code in a separate firmware device or hard logic. Each situation is specific, requiring a specific technical approach to protection. This is where technically competent legal counsel can make a tremendous difference in creating an effective, streamlined approach to protecting valuable trade secret information.

1. The general rules are simple:

a. Never share trade secret information unless it is absolutely necessary to the conduct of the business.

b. Do not share trade secret information unless the information is necessary to the conduct of the business.

2. You may be asking if all this is really necessary, as you don’t see your competitors talking about their trade secrets, or the steps they take to protect such assets. And that is precisely the point.

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What makes the CCPA, which goes into effect on January 1, 2020, extraordinary? First, it may be the first privacy law to potentially shifting ownership of a consumer’s information back to the consumer. Second, it requires transparency on the part of the companies gathering the consumer information. Third, it holds companies accountable for protecting your personal information. Fourth, and perhaps most important for our readers, the CCPA may have a bigger impact than you think on Florida (or other non-California) companies.

If you operate a business that “does business” in California, either physically or online, the CCPA requires you to provide rights to one class of consumer while not providing those rights to another at Stanford. One communicated to the other “LOGIN” messages, access to a computer or website. The first communication between two computers occurred...
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