

DEFINITION AND PROTECTION OF TRADE SECRETS

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Nowadays, the social economy is developing rapidly, and the market conditions are changing rapidly. In order to gain a place in the market, the company must have its own core competitiveness, which requires the company to have its own uniqueness. Trade secrets are an important part of ensuring the uniqueness of a company. In order to protect trade secrets, companies must know how to define, how to use and protect them. This article provides some explanations on the definition, importance and how to protect trade secrets.

Keywords: trade secret, importance, trade secret protection methods.

With technological progress and economic development, it is particularly important to obtain information and analyze and summarize in time in the market. Each company has gradually established its own competitive intelligence system to analyze market conditions and competitors. The use and protection of trade secrets are also very important to the company. In today's international market, there are many similar companies. How to stand out from the huge number of competitors? Better use of trade secrets may be one way.

What is a trade secret?

Trade secrets refer to technical information and business information that are not known to the public, can bring economic benefits to the right holder, are practical, and are protected by the right holder according to China's Anti-Unfair Competition Law [1]. It has the characteristics of secrecy, value, practicality and confidentiality.

According to the definition of the «Economic Espionage Act» of the United States, «trade secrets» refer to all forms and types of financial, commercial, scientific, technical, economic, or engineering information, including data, plans, edits, programming devices, formulas, designs, prototypes, step, technique, process, procedure, program, or symbol [2].

According to Article 1465 of the Civil Code of the Russian Federation, trade secrets refer to information of any nature (production, technology, economics, management and other) about the results of intellectual activities in the field of science and technology, as well as information about methods of engaging in professional activities [3].

Trade secrets have the following three characteristics in the actual application of the company: a. Competitors do not know or are not easily available; b. Have commercial value or have a competitive advantage in the market; c.

The owner of the information uses reasonable efforts to protect the confidentiality of the information.

The importance of trade secret.

Trade secrets are related to the survival and development of enterprises. With the development of the economy, the infringement of trade secrets has gradually increased, and it is extremely important to strengthen the importance of trade secrets.

Trade secrets are the intangible wealth of an enterprise. Once infringed, it may lead to bankruptcy of an enterprise. Therefore, we have to take various measures to stop and punish the infringement of trade secrets in unfair competition in order to protect the right holders. Trade secrets are effectively protected, so that the normal order of transactions in the market can be guaranteed.

Today, with frequent international technical cooperation and economic exchanges, every country must have its own core products and its own advantages, so that it can occupy a place in the international market. In this international society where information is spreading rapidly and industrial espionage is everywhere, we should take more stringent protection measures to prevent trade secrets from being violated.

Under modern technological conditions, major changes have taken place in commercial secrets, whether from the carrier or the means of dissemination. In particular, the invention of digital information dissemination methods such as satellite lines and the Internet has made traditional trade secret protection measures far from being able to meet the confidentiality requirements in the high-tech environment. This has prompted the protection of trade secrets to be improved and updated along with the development of the times, instead of staying on traditional confidential technology.

At present, due to fierce market competition, companies will spend a lot of money and years of hard work to develop new products and services. If the protection of trade secrets is insufficient, then competitors can easily copy their results. This will lead to similar products appearing in the market to compete at lower prices. This will cause a fatal blow to R&D companies. The theft of trade secrets will hinder the promotion and release of new products and will bring huge losses to the company.

In the current era, employee loyalty is difficult for company executives to control. Due to the changes of the times and the development of society, personal concepts are not the same as before. In the past, a person tends to stick to the same job until retirement. Today, there are many similar companies in the industry, and the range of employees' choices is huge. For reasons such as the pursuit of a higher position, the pursuit of a more ideal career plan, or the pursuit of a higher salary, employees will choose to quit. This results in a sit-

uation where employees do not have a high degree of loyalty to the company. There will always be employees who are willing to sell trade secrets to competitors in exchange for decent pay or higher positions.

The huge content of trade secret protection has become extremely complicated. Due to the complexity of the current economy and increasing competition in the global market, the definition of trade secrets has been gradually expanded. In addition to manufacturing methods, experimental data, source code, prototypes and other traditional secrets, even employee salary, employee education and other information may fall into the scope of trade secrets. The problem is that it is difficult for governments and companies to define which information transmission is permitted and which is not. This has led to endless litigation and disputes between companies.

The world has never been so closely connected as it is today. Goods, services, information and ideas can flow more or less seamlessly across borders. Customers and companies can share information across borders in a short period of time. The company not only needs to compete with local competitors, but also with competitors in other countries and regions. Due to different national conditions, the legal departments of all countries will give different definitions of trade secrets. This has caused many companies may spend years and a lot of resources to develop new products and services, only to find that competitors in other countries have copied them and reaped rewards without being punished.

How to protect trade secret? For companies, the means to protect trade secrets briefly requires three types of protection measures, physical methods, digital technical methods and regulatory methods. Physical means such as setting up safes or safe houses to store important company information. This method is mostly used by companies in the last century. Digital technology is the mainstream method today. This method is to establish a network firewall, set a strong password, or restrict employees' access to content, etc., to prevent the theft of trade secrets. The regulatory method is to issue relevant regulations or sign contracts with employees to restrict employees from divulging known trade secrets.

Specifically, a comprehensive trade secret protection mechanism can be established for the company, which mainly includes the following eight steps.

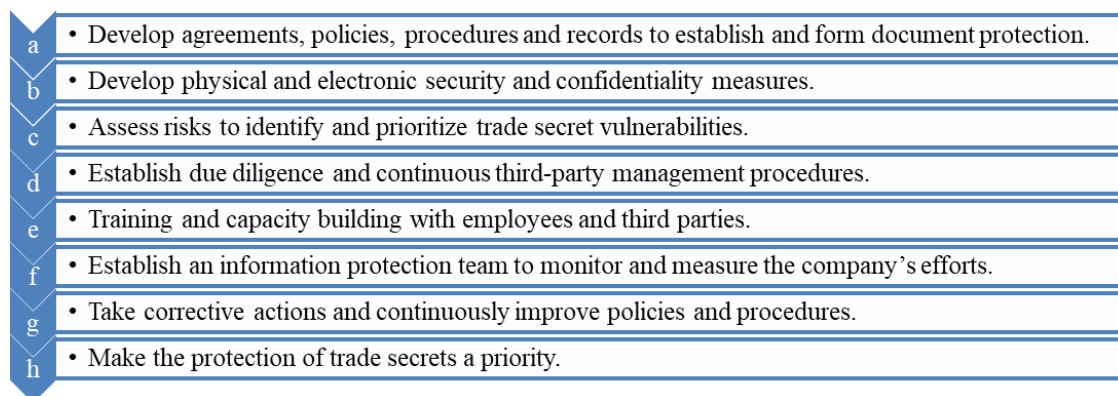


Fig. 1. Steps of trade secret protection mechanism.

The government should support companies in protecting trade secrets. Reasonable possession of trade secrets, on the one hand, can create a gap between the company and the company and promote the progress of both parties. On the one hand, it can also effectively protect the content of their respective companies. The support of the rules and regulations of the government and legal departments can enable companies within the country to develop better, and can also prevent important commercial information from being stolen by commercial spies in other countries. This is of great benefit to the maintenance of the domestic business environment and the international business environment.

Practicality of trade secret protection measures and their feasibility in China

In view of the importance of trade secrets to enterprises and the importance of protecting trade secrets, it is very necessary to apply trade secret protection measures to practice. China is an influential developing country in the world. It is also necessary to protect the trade secrets of right holders in accordance with the law. The reasons can be briefly summarized in the following four aspects:

- a. Strengthening the protection of trade secrets is a requirement for safeguarding the legitimate rights and interests of trade secret owners;
- b. Strengthening the protection of trade secrets is the need to maintain the normal order of market competition;
- c. Strengthening the protection of trade secrets is a requirement for participating in the integration of the world economy;
- d. Strengthening the protection of trade secrets is the need to improve the overall effect of legal protection of trade secrets.

Trade secrets are an important manifestation of an enterprise's core competitiveness and a guarantee for the acquisition of an enterprise's exclusive status. The level of protection of trade secrets directly determines the long-

term trend of an enterprise's economic benefits, and it is worthy of focus by enterprise managers.

The establishment of a scientific business secret management system and the full protection and use of business secrets can continuously enhance the competitiveness of enterprises and guarantee the normal transaction order in the market economy. The trade secrets of an enterprise can bring good economic benefits and maintain its leading position in the market. Companies better establish and improve the enterprise trade secret management system and trade secret protection mechanism, which is conducive to the effective use of the value of enterprise intangible assets and enhance the core competitiveness of the enterprise.

Bibliographic references

1. Article 10 of the Anti-Unfair Competition Law of the People's Republic of China (1993-09-02).
2. *Krotoski, Mark L.* (November 2009). «Common Issues and Challenges in Prosecuting Trade Secret and Economic Espionage Act Cases» (PDF). United States Attorneys' Bulletin. Washington, DC: United States Department of Justice. 57 (5): 2–23, at p. 7.
3. *Yan Xiaowei, Meng Xiangjuan*, «The Object of Protection and Exclusive Right of Russian Trade Secrets». Published in «Russian Intellectual Property Environment Research Report», October 12, 2016.