

Enhancing Business Competitiveness: Trade Secrets as Business Tools

Ms. Caroline Wanjiru (Research Fellow-CIPIT)

Outline

- Introduction
- Trade Secrets
- Efficiencies of Trade Secrets
- Challenges
- Opportunities
- Q&A

Trade Secrets

- A trade secret is any confidential information that belongs to a business
- Must have commercial value
- Can be about any aspect of the business from research and development-Innovation Process, production or manufacturing, trading, marketing etc

Protecting Trade Secrets

- Not registrable like other forms of IP
- Business should honestly acquire it
- Business should take active steps to keep it as a secret
- Disclose on need to know basis
- Use of contractual arrangements
- Planning efficiency

Benefits of Trade Secrets

- Knowledge Economy vs Industrial Economy
- Its infinite
- Determine the time frame it remains a secret
- What is payable to the inventor/owner
- Convey the knowledge of the secret for it to be useful
- Internal security measures can be sufficient

Efficiencies of Trade Secrets

- Effectiveness depends on use
- Confidentiality
Agreements/Arrangements
- License Agreement
- Franchise Agreements
- Remedies- Breach of Contract
Damages

Trade Secrets Examples

- Discovered by Joseph Lawrence 1881
- Sold to Pfizer Sold in 1881
- 10% gross sales
- Royalties payable as long as the product was manufactured and sold
- Formula discovered legitimately by another
- “Listerine” -Warner-Lambert Pharm. Co. v. John J. Reynolds, Inc., 178 F. S(Pfeizer) upp. 655 (S.D.N.Y. 1959)
- Image from <https://www.listerine.com>



Trade Secrets cont'd

- “The parties are free to contract with respect to a secret formula or trade secret in any manner which they determine for their own best interests. ***A secret formula or trade secret may remain secret indefinitely.*** It may be discovered by someone else almost immediately after the agreement is entered into. Whoever discovers it for himself by legitimate means is entitled to its use.”

Trade Secrets cont'd

- Coca Cola Recipe
- New York Times Best Seller List criteria
- KFC Chicken Recipe
- Google Search Algorithm
- Customer profiles; marketing strategies; pricing/sales information in a company
- Internal Security mechanisms

Challenges

- May lead to an over secretive society hindering exchange of ideas/innovation
- Assessing the value of the information
- Dishonesty in acquisition of knowledge/information
- Require constant monitoring by those who know
- May lead to unfair practices

Opportunities

- Digital Economy-E-commerce
- Used in both Knowledge & Industrial Economy
- Limitless /perpetual
- Can be used with other forms of IP

Q & A

Thank you!

cmuchiri@strathmore.edu

www.cipit.org