

World Intellectual Property Organization  
(WIPO) AND National Institute for Micro,  
Small and Medium Sized Enterprises(NIMSME)  
Training of Trainers Program

**TRADE SECRETS**

15<sup>TH</sup> AUGUST 2007

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**TRADE SECRETS**

# What can be a Trade Secret?

Information, including a formula, pattern, compilation, program device, method, technique,

Also known as undisclosed information as stated in TRIPS.

# TRIPS

## Art. 39

: To ensure effective protection against unfair competition as provided in Art 10bis of the Paris Convention (1967), Members shall protect undisclosed information as long it is:

-A secret, has commercial value because it is a secret, and has been subject to reasonable steps by the person legally in control of the information, to keep it a secret.

-Submissions made to Government for various regulatory approvals shall be protected against disclosure for commercial use except where necessary to protect public interest..

# TRADE SECRETS ORIGIN

Origin in common law, unlike other IP and its protection is based on the business ethics

A trade secret can be perpetual in nature and can have a long life. E.g. Coca Cola.

A Patent begins its life as a trade secret.

# DOCUMENTS

## Non Disclosure Agreements (NDA)

Obligation to respect confidence and secret

- It can defines confidential information.
- There can be Exclusions from confidential information.
- Defined Obligations of receiving party.
- Time period of the confidentiality
- Other provisions also could exist.

# Documents Contd...

- Noncompete Agreements:
- Can be post-employment competition/post contract competition by agreement.

# Cause of actions for Trade Secrets

Some causes of action could arise as follows:-

Misappropriation of a Trade Secrets;

Breach of term not to Compete;

Breach of Confidentially or Non-disclosure Agreement;

Tortious Interference with Contract;

Breach of a Fiduciary Duty; (Professional)

Unfair Competition;

Breach of Loyalty.



# TRADE SECRET V/S PATENT

Maintain trade secret?

or

Seek patent protection?

# Trade Secrets V/s Patents

Factors to be evaluated

How long will the secret remain valuable?

Can it be reverse engineered?

Can others independently develop it?

Who can copy it?

Who can steal it?

Can the secret be protected?

What is the cost of this protection?

# Trade Secrets Breach

Breach of the confidential relationship

Through improper means

- Theft, bribery, misrepresentation, espionage, etc

# INDEPENDENT RESEARCH

Whosoever discovers any secret independently, that is, without using any illegal means or violating any agreement is not in violation of any Trade Secret.

EG: Coke is trade secret protected formula. A food technologist analyzes the contents of Coke and determines its composition and recreates the coke formula. The food technologist can legally use this information to make and sell his own soft drink but cannot call it Coke.!

# Case law

*Seager v. Copydex LTD* 1967 RPC "The law on this subject does not depend on any implied contract. It depends on the broad principle of equity that he who has received information in confidence shall not take unfair advantage of it. He must not make use of it to the prejudice of him who gave it without obtaining his consent."

**SPRINGBOARD DOCTRINE!**

- THE USE OF INFORMATION IN ALL ENVIRONMENTS, INCLUDING WITHIN EDUCATIONAL AND RESEARCH INSTITUTIONS, INVOLVES COPYRIGHT OR CONFIDENTIAL INFORMATION. USERS / WORKERS AND CONCERNED PERSONS THEREFORE NEED TO KNOW THAT EITHER LAW IS APPLICABLE TO THEM.

**Thank You**