

TRADE SECRET

A trade secret is information (formula, pattern, device, compilation, process, recipe, etc.) used in one's business which offers a commercial advantage over competitors who do not know or use the information.

In order to show improper and illegal use of a trade secret, a four step analysis must be satisfied:

- (1) Does a trade secret exist?
- (2) was the trade secret communicated to the defendant,
- (3) while the parties were in a relationship of trust and confidence?
- (4) was the use of the trade secret by the defendant to the plaintiff's detriment?

To find whether a trade secret even exists, we review six factors:

- (1) The extent to which the information was known outside the plaintiff's business;
- (2) the extent of information to which persons in the plaintiff's organization were privy;
- (3) measures taken to guard the secrecy of the information;
- (4) the value of the information (both to the plaintiff and to the defendant);
- (5) the effort expended in developing the information; and
- (6) ease or difficulty to obtain the information through proper means. Reverse engineering of the finished product and independent research are acceptable. Where the information is obtained through improper means, even if it was otherwise publicly accessible, the trade secret is infringed.

Protect trade secrets by non-disclosure and secrecy agreements, and carefully follow the six factors.