



Tech Tuesdays With Musa.

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TRADE SECRETS: YOUR KEY TO COMPETITIVE ADVANTAGE.

Introduction

From the closely guarded recipe of Coca-Cola to the elusive blend of herbs and spices that define KFC's iconic flavour and even the clandestine Krabby-patty secret formula, trade secrets have long been the cornerstone of competitive advantage for businesses worldwide. This week, join us as we look into the intriguing world of trade secrets—an alternative path to safeguarding valuable intellectual property, distinct from patents, trademarks, and copyright.

What are Trade Secrets?

A trade secret generally is any commercially important information or information that has value by virtue of not being generally known. It can range from a recipe, customer list, business plan, manufacturing process, source code or any other information that provides a business with a competitive edge.

At its core, trade secret protection serves as an alternative to traditional intellectual property mechanisms such as patents, trademarks, and copyrights. Unlike these forms of protection, trade secrets rely on the confidentiality of valuable information rather than formal registration or disclosure. Unlike patents or trademarks, there is no government body where one can file an application to protect trade secrets. The duty to protect a trade secret solely rests on the owner of the information.

Pros and Cons of Trade Secrets Over Other IP Protection Mechanisms

The decision to use a trade secret instead of other methods of protection depends on the nature of the intellectual property to be protected. The allure of trade secret protection lies in its indefinite duration. Unlike a patent, where an inventor enjoys exclusive rights to their invention for 20 years from the date of filing, a trade secret exists in perpetuity for as long as others do not know about it.

However, this perpetual safeguard comes with inherent risks and limitations. The protection of trade secrets only prohibits the disclosure or use by one to whom the secret was disclosed in confidence. Unlike patents, trade secret protection offers no defense against independent discovery or reverse engineering by competitors. For example, if the intellectual property in question pertains to a new manufacturing method for a product, and if this method can be deduced by examining the product itself, then patent protection is likely the most suitable form of safeguarding the intellectual property.

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The U.S. Supreme Court noted in **Bonito Boats v. Thunder Craft Boats 489 U.S. 141 (1989)** that:

“State trade secret law has never given the holder of a trade secret protection against reverse engineering by the public or a competitor. In order to receive protection from reverse engineering, the holder of the intellectual property must seek the protection of federal patent law”.

Takeaway

Below are some key points from this week’s discussion:

- Trade secret law provides indefinite future protection, as long as the information remains undisclosed.
- It prevents the unauthorized disclosure or use of the trade secret by individuals to whom it was divulged in confidence.
- If someone independently develops the same idea, the trade secret loses its legal protection.
- Trade secret law does not shield the holder from reverse engineering attempts by others. Join us next week as we discuss misappropriation and how to safeguard your company or organisation’s trade secrets.

Article by Princess Musa Dube

If you have interest in an in-depth discussion on this subject matter or any Intellectual Property and Technology law related issues, feel free to contact us at **info@gobhozalegalpractice.co.bw Tel: 3116371**

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