

Services & Industries

Trade Secrets

A trade secret means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code or improvement thereof.

Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. secret;
2. of value;
3. for use or in use by the business; and
4. of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes. See § 812.081 Fla. Stat.

In some instances, trade secrets may be the only type of IP protection available to an entity as the formula, pattern, device, combination of devices, or compilation of information is not subject to patent protection due to a variety of reasons.

In the alternative, some entities choose to keep the formula, pattern, device, combination of devices, or compilation of information a trade secret, as opposed to seeking patent or copyright protection, as patents and copyrights eventually become public domain whereas trade secrets do not.

Confidentiality/Proprietary Information Agreements

Confidentiality/Proprietary Information agreements assist in maintaining a company's trade secrets and other valuable or proprietary business information, such as methods of doing business, from becoming known and used in the public. Oftentimes an employer will require its employees to sign a confidentiality/proprietary information agreement in an effort to prevent its employees from distributing the information to other entities, such as competing companies, during the course of employment with the employer and thereafter. The utilization of such confidentiality/proprietary information agreements are beneficial during the time span in which the confidential information is not publicly available but will become available in due course, such as when performing preliminary research for a new product that will be launched in the future or unpublished patent applications, and when the confidential information is not intended to be made public (such as a secret formula for a brand of cola).

Non-Compete Agreements

Non-compete agreements are an effective way for employers to prevent departing employees from disclosing trade secrets and other valuable or proprietary business information to competitors. By carefully crafting non-compete agreements in compliance with Florida law, employers can prevent departing employees from working for competitors, substantially reducing the risk that valuable business information will be disclosed. But it is critical that these agreements be properly prepared. Non-compete agreements which do not comply with Florida Statute 542.335 will not be enforced by the courts.

Our attorneys advise clients on how to maintain a trade secret and enforce an owner's rights, should the trade secret be stolen.