

Trade Secrets Law

I. TRADE SECRETS LAW IN CHINA

In China, trade secrets law is covered by Chapter II, section 10, of the *Law Against Unfair Competition of the People's Republic of China*.¹ China created this law after the ratification of the international TRIPS agreement, which set out a minimum standard of protection, for member countries of the treaty, governing intellectual property rights.² The *Unfair Competition Law* was China's response to the ratifying of the treaty, but goes beyond just the minimum requirements set out by the TRIPS agreement.³

Trade secrets are defined in the *Unfair Competition Law* as technical or operational information that is not known to the public, has economic potential, and has "practical applicability."⁴ Practical applicability means the information has some positive use to society. Moreover, in order to maintain the information as a trade secret, the information must be kept under a reasonable level of secrecy and not released to the public.⁵

After defining the necessary requirements for a trade secret, the *Unfair Competition Law* explains how trade secrets can be infringed upon. Under the law, infringement results when person or company illegally obtains and uses a trade secret from another party.⁶ Illegal activities can include stealing, coercion and other "improper

means.”⁷ Breaking a confidence agreement to utilize a trade secret will also be construed as infringement.⁸ Finally, if a third party has full awareness of the illegal acts, they can be deemed to have infringed on the trade secret, if they use the illegally obtained information.⁹

II. TRADE SECRETS LAW IN THE UNITED STATES

Trade secrets law in the United States is covered by two major sets of laws, and follows the TRIPS agreement. The Uniform Trade Secrets Act (UTSA) is a model rule that can be modified and adopted as a state sees fit, and the Economic Espionage Act is a federal rule to protect trade secrets.

Most states have adopted the UTSA in some form; Illinois legislature has created the Illinois Trade Secrets Act (ITSA), which closely follows the original UTSA.¹⁰ The ITSA defines a trade secret as any information, including non-technical data, techniques, etc., which derives economic value from not being generally known and is maintained with a reasonable level of secrecy.¹¹ To determine whether information was kept secret, a court will look at numerous factors such as the extent the information is known, the ease of acquiring said information, and the measures taken to protect that information.¹²

While the UTSA deals entirely with state issues, the Economic Espionage Act is a federal law that takes into account foreign as well as domestic trade secret violations.¹³ The federal government can impose criminal penalties, such as fines and imprisonment, on whoever utilizes a trade secret for economic benefit and knowingly harms the original owner of the trade secret.¹⁴ However, the Economic Espionage Act is used

mostly when all other remedies are exhausted and depends on the federal government bringing an action.¹⁵

III. PROTECT YOURSELF

It is important for a person or business to take steps to protect themselves from any harmful disclosure of confidential trade secrets. First and foremost, an employer should always have employees sign confidentiality agreements with non-disclosure clauses, and also define what is considered confidential. An employer should also always limit access to confidential information by having password protection for electronic information and locks for physical information. All sensitive information should be labeled confidential and physical copies of the information should be shredded after use. This is not a comprehensive list as numerous other strategies can be used to protect secrets. Most importantly, trade secrets must be maintained with a high level of secrecy or else they will not be protected.

IV. CONCLUSION

Both China and the United States have an established set of laws to protect trade secrets and define trade secret information similarly. These laws provide for remedies against parties who illegally obtain and use confidential information. Most importantly, both systems of laws stress the necessity of keeping information secret so that protection can apply.

-
1. *Law Against Unfair Competition of the People's Republic of China*. 1993.
 2. World Intellectual Property Organization, *Understanding the WTO*, http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm.
 3. *Id.*
 4. *Eighth National People's Congress. Law Against Unfair Competition of the People's Republic of China*. 1993.
 5. *Id.*
 6. *Id.*
 7. *Id.*
 8. *Id.*
 9. *Id.*
 10. 765 ILCS § 1065, *Illinois Trade Secrets Act*.
 11. *Id.*
 12. Joseph Nabor and Karl Fink, *ISBA Trade Secret Law Essentials*, 2008, What Every Lawyer Should Know About Intellectual Property Binder.
 13. 18 U.S.C.A. § 1832, *Theft of Trade Secrets*
 14. *Id.*
 15. *Id.*