

Top 10 Best Practices To Maintain Trade Secrets

May 22, 2012 By [Peter Bauman](#)



Under California law, Civil Code, Section 3426.1(d), trade secrets are defined:

“‘Trade secret’ means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
- (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

With this in mind, here is our:

Top Ten List Of Practices To Maintain Trade Secrets:

1. Institute a program to identify trade secrets within the organization by regularly meeting with your attorneys, managers, and key employees to understand what is being worked on, how it is being worked on, and what might qualify for protection. You can’t protect a trade secret if you don’t know what it is.
2. Document the actual or potential economic value derived by maintaining secrecy with respect to the information. This will support later contentions that the information qualifies as a trade secret and will simultaneously assist the organization in determining the best way to use the information.
3. Require that company employees and contractors sign confidentiality, non-disclosure and non-use agreements applicable to any and all trade secrets.
4. Include in customer agreements definitions of trade secrets, license trade secrets for use on a limited basis, state that the customer may have access to trade secrets, their economic value and the importance of maintaining their secrecy, prohibit non-authorized use and reverse

engineering, decompiling and disassembling materials which contain trade secrets, require return or destruction of such at your direction and obtain a warranty from the customer that access to your trade secrets will not violate any agreement the customer has with third parties.

5. Limit the number of people within the organization who have access to the information, or to whom it is disclosed. Include only those with a need to know.

6. Protect the information by all reasonable means, including locks, segregated files, computer passwords and other devices.

7. Conduct regular audits of units within the organization to confirm that employees are taking necessary steps to maintain trade secrets that have been identified or are newly developed.

8. Develop specific guidelines for how best to protect different types of trade secrets within the organization, based on the nature of the material. A mathematical or chemical formula is different than a customer list and efforts should be tailored to the trade secret at hand.

9. Require that departing employees return any and all documents containing trade secrets of the organization.

10. Use exit interviews to remind departing employees that they remain bound by confidentiality, non-disclosure and non-use agreements to protect trade secrets after they leave.

Our [business and intellectual property attorneys](#) understand these issues and can assist your business in dealing with trade secrets.

For over 35 years small businesses, major corporations, public entities, individuals and insurance companies have depended on Tharpe & Howell, LLP, to deliver pragmatic, innovative, cost-effective civil litigation and transactional solutions. For more information, please contact us at (818) 473-5720 or email your request to cabusinesslawreport@tharpe-howell.com.