



ALTACIT GLOBAL

**Protection of trade secrets and confidential information - Authored by Arya Mathew,
IP Attorney with Altacit Global Email: info@altacit.com**

Introduction

With the rise of the information age and growth of the knowledge economy, managing and protecting information, as well as enforcing against its misuse, have become increasingly critical to business enterprises. Aside from protecting the intellectual capital of a business through the patent, copyright and trademark registration systems, the law further protects against misuse of confidential information, including trade secrets, to a business industry that takes the appropriate steps to protect such information. A trade secret relates to confidential information associated with industrial and commercial activity.

Confidential Information

Confidential information cannot be something that is already present in the public domain. Hence, the information as part of the compilation can draw upon informations in the public domain. Confidential information may be a formula, plan, a sketch, or something similar which is developed by an individual out of the things available for common use by anybody. To constitute confidential information what is stressed on is the fact that the maker of the document must have used his intellectual effort and thus produced a result which can only be produced by somebody who goes through the same process.

In order to be confidential, it is no matter if the information is partially in the public domain. What is necessary is that the conclusions drawn, as the confidential information as a whole must not be common knowledge or in the public domain. Sometimes information may consist of several items collected from the general pool of information, but what makes it distinct and confidential is the separate and identifiable collection. The proposition that information is regarded as confidential has four main classes has been accepted, each of them being trade secrets, personal confidences, government information and artistic and literary confidences.

Trade Secrets

A trade secret is usually associated with industrial or commercial activity. It is information which, if disclosed to a competitor, would cause real harm to the owner of the secret. It must necessarily be information used in trade or business. In this case the owner must limit the dissemination of it or at least not encourage widespread publication. Most importantly, the information must remain outside the public domain to be protected. It is something that is developed by a company through its own efforts, unknown to others in competing businesses, which gives it an advantage over its competitors. But it is important to note that the novelty of the information does not matter so long as it is inaccessible. A trade secret can be, in such a sense, considered to

Altacit Global

Creative Enclave, III Floor, 148-150, Luz Church Road, Mylapore, Chennai – 600004.
Tel. 044 24984821 Tele-Fax: 044 42104341 Email info@altacit.com, Website www.altacit.com



be falling within the ambit of confidential information. It may include things which are potentially patentable but not being patented for some reason or even non-patentable things like a method of doing business.

Protection available for trade secret and confidential information

The protection accorded to the trade secret or confidential information holder is against the disclosure or unauthorized use of the trade secret or confidential information by those to whom the secret has been confided under the express or implied restriction of nondisclosure or nonuse. The law also protects the holder of a trade secret against disclosure or use when the knowledge is gained, not by the owner's violation, but by some 'improper means'. A trade secret, however, does not offer protection against discovery by fair and honest means, such as by independent invention, accidental disclosure, or by so-called reverse engineering. For confidential information protection is given to the relationship rather than to the information, i.e., relief is given to the breach of trust or contract. More importance and focus is on the relationship and therefore, its breach rather than on the information alleged to be confidential.

Information is considered to be a secret when it is not generally known among or readily accessible to persons within the circles that normally deal with that kind of information. It is not sufficient if the information is a secret, but it must also have commercial value. Any information is said to have a commercial value if it is continuously used in one's business which gives the owner an opportunity to obtain an advantage over competitors who do not know or use it, so long as the information is in fact kept secret.

There are three essential requirements for information to be classified as a trade secret.

- The information must be secret
- It must have commercial value
- Holder must have taken reasonable steps to keep it secret.

Conclusion

Sometimes, information may be secret, but it may lack commercial value, wherein it cannot be construed as trade secrets. This is a standard principle that is applied in countries with common law and civil law jurisdictions. Moreover, the holder of the information must take reasonable steps to maintain the secrecy of the information. It is the owner of the secret who must take steps that prohibit the information to be passed on from his confidants. For instance, employees, clients or other customers to whom the secret must be revealed must be told about the secret nature. They can be made to enter into confidentiality agreements. The owner can alternatively take any physical security measures to prohibit the misappropriation of the information.

Altacit Global