

Trade Secret



"For years, Colonel Harland Sanders carried the secret formula for his Kentucky Fried Chicken in his head and the spice mixture in his car. Today, the recipe is locked away in a safe in Louisville, Ky. Only a handful of people know that multi-million dollar recipe (and they've signed strict confidentiality contracts)." 1

Trade Secret

- What is protected?
 - How do you get protection?
 - What rights does it convey?
 - What infringes?
 - What defenses are available?
-
- What is the source of law?
 - What is the policy behind it?

2

Sources of Law

- State Law
 - Common law: First Restatement of Torts, §§ 757-758
 - Statute: 45 states (but not Massachusetts) have adopted variations of the Uniform Trade Secrets Act; Mass. has its own statutory protection.
- Federal courts applying state law
- Economic Espionage Act of 1996

3

Restatement (First) of Torts

- A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers.
- Restatement (First) of Torts, 757 cmt. b (1939)

4

Uniform Trade Secrets Act

- §1(4) "Trade secret" means information, including a formula, pattern, compilation, program device, method, technique, or process, that:
- (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
 - (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

5

Is it a trade secret?

1. Secret. Not generally known to the public, or readily ascertainable
2. Derives economic value from its secrecy
3. Reasonable precautions to keep the information secret

Theories of protection

- Lockean labor-desert
- Utilitarian incentive to innovate
- Business ethics / cultural planning theory

6

