



## Protecting Trade Secrets By James A. Wahl<sup>1</sup>

If you mention the term “trade secret,” many people will think of “the Colonel’s 11 herbs and spices” or the formula for Coca-Cola®. While these are certainly closely guarded and very valuable trade secrets, the fact is that most businesses have information that can and should be protected.

### **What can be protected?**

The law defines trade secret as any information that is generally not known to the public and derives independent economic value from not being generally known, and that is the subject of reasonable efforts to maintain secrecy. Categories of protectable information include formulas, patterns, compilations, program devices, methods, techniques and processes. Information that meets this definition is protected against unauthorized disclosure or use.

### **How does this apply to my business?**

Your business may well have a “secret sauce” recipe or proprietary technology that qualifies for trade secret status. At a more basic level, your company undoubtedly has a customer or client list. And, you probably use social media and related technologies to compile information on your customers’ past purchases and preferences. The combination of your customers’ contact information, past purchases, likes and dislikes, confers a distinct competitive advantage, allowing you to target your advertising and marketing effort to enhance sales.

### **How do I maintain secrecy?**

In general, you should use appropriate precautions to keep trade secret information “in house.” Marking documents “confidential,” providing notices to employees that identify the company’s confidential information, restricting access to those with a need to know and maintaining password-protected access to company data are all appropriate practices. Non-disclosure and non-competition agreements with key employees provide additional protections. Actions taken should be recorded, so that if there is a misappropriation you will be able to establish that you have made reasonable efforts to maintain secrecy.

### **Implementation.**

The first step is to identify the information in your business that qualifies for trade secret status. Then, make sure that you take appropriate steps to restrict access and prevent unauthorized use or disclosure. If a misappropriation of your trade secret does occur, the law allows you to take legal action to protect your rights.

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