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PROTECTING TRADE SECRETS IN THE ERA OF THE GLOBAL SOCIAL MEDIA

Information is an increasingly more important part of any company's assets. That is an unanimous conclusion of international studies about the value of companies, in such way that an author stated that "*the ten most valued companies in the world possess more intangible or intellectual capital than tangible capital*" (OVE GRANSTRAND, *The economics and management of intellectual property*).

The information owned by a company can be protected through one of the various regimes of intellectual property; those usually used to a greater extent are trademarks, patents or copyright.

The protection granted by trade secrets is usually less known and used. In fact, the protection of the information that grants a company a competitive advantage in the market is too often neglected, which may be a result of the fact that a company cannot benefit from such protection by means of a registration before a public agency.

Although it seems a paradox, trade secrets are only protected by law if its owner can show that it has taken reasonable measures to protect them.

Our experience in advising several companies facing the use of its trade secrets by its competitors shows that a very significant part of those companies are not aware of the need to implement such protection measures, nor have any idea of how to enforce them. And, the fact is, the continuity and competitiveness of such companies is largely dependent on such protection.

What might be a trade secret? The general definition is: all information that is not generally known and that grants a company a competitive advantage over its competitors.



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Simple examples might be information on customers and suppliers (a simple list of customers may be a trade secret), information on methods or processes of production (that are not sufficiently innovative to deserve a protection as a patentable invention) or information on marketing strategies or new product launches.

Trade secret protection is attainable through the implementation of contractual measures (confidentiality or non-competition agreements), technical measures (access passwords or encryption) and organizational measures (segregation of information and adoption of information security policies).

If such measures are not adopted, the company affected by any information leak cannot effectively react to the use of such information by its competitors; the company can only use judicial means to prevent the use of such information if it can show that it has taken reasonable measures to keep the information confidential.

Thus, if a customers' or suppliers' list is hosted in a system not protected by Access passwords or where the passwords are made freely available to third parties it cannot be considered a trade secret. In consequence, the company cannot avoid its use by any third parties.

The emergence of global social media raises new questions on this regard, involving greater risks. The simple publishing of contacts through networks like LinkedIn or Facebook can make known to others the identity of the company's customers or suppliers. Posting in blogs is also a way through which confidential information may leak, in prejudice of the company's competitiveness.

Therefore, companies must be alert to the need of developing specific rules on the use of electronic social media by its staff and include such rules in its internal information security policies. This is crucial for keeping their confidential information a legally protected secret.

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