

Trade Secrets

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Trade Secrets

Federal and State Law:

e.g. Economic Espionage Act of 1996

Subject Matter:

- ❑ Valuable, confidential business information, including proprietary methods and techniques, R & D plans, cost and customer data

Scope of Protection:

- ❑ Right to exclude others from using trade secret *if learned improperly*
- ❑ Independent creation and rightful discovery, including legitimate reverse engineering, are okay.

Trade Secrets

Ownership:

- ❑ Employers own trade secrets developed by employees (at least those paid to create)
 - ❑ Courts may also award shop rights, as with patents (prior user rights)

Term:

- ❑ Indefinite (until secrecy ends)
 - ❑ Coca-Cola formula: 132 years and counting
 - ❑ But Listerine
- ❑ No Filings or formal notice (in U.S.)
- ❑ Cost: Moderate to costly (due to proactive conduct required)

International Trade Secrets

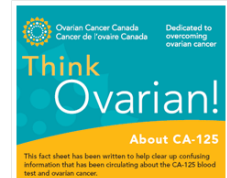
- ❑ Each country has its own trade secret laws
- ❑ Agreement on Trade-Related Aspects of Intellectual Property Rights (the “TRIPs Agreement”)
 - ❑ Signed 1994
 - ❑ Established the WTO
 - ❑ Established international standards for national trade secret laws

Trade Secrets

- ❑ How do you steal a trade secret?
 - ❑ Hire an employee who knows the secrets
 - ❑ Violate a confidentiality agreement and use information for something other than the purpose it was supplied for
 - ❑ Espionage
- ❑ Courts will want to see systematic evidence of protection
 - ❑ Confidentiality agreements for all employees
 - ❑ Non-compete (if allowed)
 - ❑ 1 year max
 - ❑ Not in California

Universities and Trade Secrets

- ❑ By and large, Universities don't have trade secrets
 - ❑ Everything must be publishable
 - ❑ Secret till published
 - ❑ Unique biological materials must be made available to others to replicate the work
 - ❑ And they replicate.....
- ❑ Biggest exception:
 - ❑ Hybridoma's
 - ❑ If commercially valuable, only give out the mAb, not the hybridoma
 - ❑ Examples: CA125 and CA15-3
 - ❑ ELISA tests for ovarian and breast cancer
 - ❑ Developed at DFCI in 1982 in Stuart Schlossman's Department
 - ❑ Licensed to Coulter Corporation
 - ❑ Still royalty generating



Universities and Trade Secrets

- ❑ Other biological materials
 - ❑ Unique animals
 - ❑ Micro-organisms
 - ❑ Germplasm

