

Tilleke & Gibbins

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How to protect company's Trade Secret in Thailand

1st Trade Secret Seminar

**The Gallery 4/F, Novotel Bangkok Siam Square
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Information eligible for Trade Secret Protection

- ▶ Information not generally known by proper means
- ▶ Information which has economic value
- ▶ Information which the owner has reasonable efforts to maintain secrecy

Appropriate Measures for compliance with the Law

- ▶ No registration or recordation required
- ▶ Protection based on fiduciary and fair competition principles rather than contractual relationship
- ▶ Ownership of Trade Secret
- ▶ “Security Measure” is the only measure that can be implemented.

Ownership of Trade Secret

- ▶ **a person who discovers**, researches, complies, or creates trade information that are trade secrets, without violating the rights of trade secrets of others, **or a person who has legitimate rights** in the result of a test or a trade information that is a trade secret, and it shall mean to **include a transferee** under this Act as well”

How to implement Security Measures

- ▶ Physical Security
- ▶ Electronic Security
- ▶ Confidentiality Agreements
- ▶ Awareness of persons concerned



Physical Security

- ▶ Access to the Building
- ▶ Access to the portion of the Building
- ▶ Access to the place where trade secret information is located
- ▶ Location of copying devices



Electronic Security

- ▶ Access to computer system
- ▶ Access to computer information
- ▶ Storage of Traffic data
- ▶ Measure preventing the copying of data



Confidentiality Agreements

- ▶ Employee Nondisclosure Agreement
 - Interview Nondisclosure Agreement
 - Exit Nondisclosure Agreement
- ▶ Business Partner/Licensee/Nondisclosure Agreement
- ▶ Nondisclosure Agreement for Business Negotiation/Prospective Licensee
- ▶ Visitor Nondisclosure Agreement
- ▶ Research Student Nondisclosure Agreement



Awareness

- ▶ Request Form
- ▶ Stamp
- ▶ Sign
- ▶ Electronic warning



Trade Secret Litigation

- ▶ Proof of Ownership
- ▶ Proof of the Existence of Trade Secret
- ▶ Proof of Trade Secret Infringement
- ▶ Proof of Damages



Proof of Ownership

- ▶ Employment Agreement
- ▶ Technology Transfer Agreement
- ▶ Trade Secret Assignment Agreement
- ▶ Asset Transfer Agreement
- ▶ Without any agreement



Proof of the Existence of Trade Secret

- ▶ Proof of its secrecy
- ▶ Proof of Economic Value
- ▶ Proof of Security Measures

Test:

Whether the business would be damaged if a competitor acquired the information?



Proof of its secrecy

- ▶ The information needs not to be unique or novel.
- ▶ Demonstrate security measures to the court
- ▶ Compare the same kind of information belonging to other competitor

Proof of Economic Value

- ▶ Cost of developing or acquiring the information
- ▶ Attempt of competitor to acquire the information
- ▶ Profit gained from the information



Proof of Trade Secret Infringement

- ▶ Acquire evidence of the misappropriation
- ▶ Obtain information about all infringing parties
- ▶ Review legal claims and possible defenses

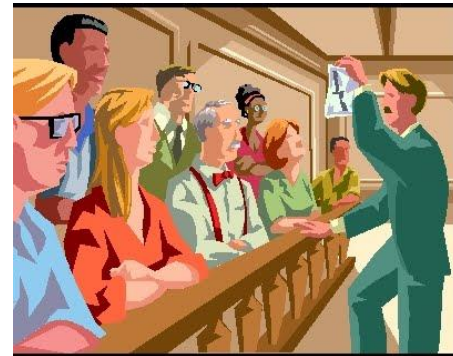


Burden of Proof

- ▶ **Section 12 of the TSA** “In a civil suit filed by the controller of trade secrets for an infringement of manufacturing process that is a trade secret, unless the contrary can be proved by the defendant, it shall be presumed that the defendant infringes the alleged trade secrets in manufacturing the product, if the controller can prove that the product manufactured by the defendant is the same as the product produced by using the controller’s trade secrets.”

Points of Concern

- ▶ Disclosure of Trade Secret before Litigation
- ▶ Disclosure of Trade Secret during Litigation



How to win the case?





It is our Trade Secret!!!





Thank you for your attention

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