

Analyze the trade secrets essay

[Economics](#), [Trade](#)



In his article "A Theory of Trade Secrets in Firms," Jan Zabojsnik (2002) argues that "each manager has access to trade secrets (p. 831)" which correspond to his respective position in the organization and those in the lower hierarchy of the office.

It is important for the manager to have access to these trade secrets as it enables them to "formulate the needed business plans so that the organization will perform better and will gain a comparative advantage over its competitors in the same industry (Hur, 2000, p. 448)." However, these managers also ought to take into account the laws governing trade secrets and the limitations imposed by these laws.

As far as the law is concerned, trade secrets in terms of technological and commercial information which are not generally known are protected against unauthorized use by other individuals and groups without the consent of the owner of the trade secrets.

The protection of these secrets seeks to advance research and development although the legal protection being offered is limited to the improper acquisition of the trade information. More importantly, the law does not prohibit nor sanction the discovery of trade secrets through fair ways without infringing on the trade secrets of other originators (Wallach, 2004).

Thus, while managers may have access to their own trade secrets and those known by their subordinates in the hierarchy, they have no right to force others to reveal their trade secrets or to acquire trade secrets from other organizations through unfair means.

According to the Restatement of Torts section 39 in 2002, a trade secret is any information which can be used in a business operation and other forms of enterprise. Further, a trade secret is said to be sufficiently valuable which can give substantial advantage to other individuals such as competitors in a specific market or industry.

An infringement of the laws governing trade secrets can result to certain legal sanctions. For example, in the case of *Kewanee Oil Company v. Bicon Corp.* in 1974, the Supreme Court ruled that the former employees of a corporation cannot disclose trade secrets to their new employers whose industry-type is in competition with their former employers (Goldstein, 1974).

As a result of the court ruling, the employees were given a permanent injunction; they were ordered to refrain from further disclosing the trade secrets of their former employees. The example of *Kewanee Oil Company v. Bicon Corp.* illustrates the point that contemporary law already provides protection for trade secrets, encompassing not only employees but also corporations and managers.

Nevertheless, even if there are already existing laws that seek to protect trade secrets, there are still contending issues which can be raised. For instance, the case of *Kewanee Oil Company v. Bicon Corp.* has been challenged by the defendants in terms of what constitutes a trade secret as far as the Ohio law is concerned.

In that instance, it can be said that there are also state laws created to protect the trade secrets of corporations aside from existing federal statutes.

In effect, the contention rests on whether or not the state law should apply in the case, or if indeed the federal laws would apply.

Moreover, Zabochnik's (2002) claim that managers should have access to their organization's trade secrets further suggests that not all of the employees are permitted to have access to such information by nature of their employment status in the company. In effect, the situation wherein employees not permitted to gain access to trade secrets eventually find for themselves these trade secrets is another point of contention in the determination of the proper legal courses which can be taken.

In any case, it is a fact that there are already laws, both on federal and state levels, which seek to protect trade secrets from being unfairly discovered without the authorization of the originators. However, it does not mean that others are prohibited from fairly knowing trade secrets on their own.

References

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