5. Trade secrets

Key Terms

**Computer Fraud and Abuse Act (CFAA):** A federal law that prohibits individuals from accessing a computer without authorization.

**covenant not to compete:** A provision in an employment contract in which an employee promises not to compete with the employer should the employment relationship end.

**cronyism:** The hiring of friends.

**discovery:** A process, prior to trial, in which litigants engage in the mandatory exchange of documents and other forms of information relevant to the litigation.

**economic espionage:** The deliberate theft of proprietary business information for the benefit of a foreign entity or government.

**Economic Espionage Act (1996) (EEA):** An act that criminalizes the theft of trade secrets and provides for penalties of up to $10 million.

**Electronic Communications Privacy Act (ECPA):** A federal law that prohibits the interception of an electronic communication (such as an email message) while in transit.

**Federal Rules of Civil Procedure (FRCP)**: Rules which govern the process by which federal civil litigation is conducted.

**Freedom of Information Act (FOIA):** A federal law under which the public may obtain government documents from federal agencies upon request.

**in-camera:** Out of view of the public.

**in-license:** To receive authorization to utilize intellectual property.

**inevitable disclosure:** A doctrine under which a court may enjoin a departing employee from accepting employment at a competing enterprise if there is a high probability that the employee would inevitably use or disclose the former employer’s trade secrets to the benefit of the new employer.

**injunction, permanent:** An order of a court prohibiting a party from engaging in some action, after a final judgment.

**injunction, preliminary:** An order of a court prohibiting a party from engaging in some action, prior to a final judgment.

**know-how:** Information that is not described within a patent and that may instead be kept as a trade secret and separately licensed.

**misappropriation:** The acquisition of a trade secret by someone who knows or has reason to know that the trade secret was acquired by improper means or disclosure or use of a trade secret of another without express or implied consent.

**nepotism:** The hiring of relatives.

**nondisclosure agreement (NDA):** A contract that requires a party not to disclose certain specified information that a business considers important to its competitive advantage.

**nonsolicitation agreements:** Agreements that prohibit partner businesses from attempting to lure away a trade secret owner’s employees.

**nonsolicitation clause:** A provision inan agreement (such as an employment agreement) that prohibits a departing employee from attempting to lure away the employee’s former colleagues.

**notice and takedown:** Proposed legislation that would require third parties to expeditiously remove (take down) alleged trade secrets from the Internet even without a court order upon notification by the trade secret owner.

**out-license:** Topermit others to use intellectual property.

**quash:** To declare void.

**readily ascertainable:** Information is readily ascertainableif it is available in trade journals, reference books, or published materials, or if it can be duplicated quickly and inexpensively or reverse engineered.

**redact:** To block out or omit a portion of text so that it is not visible.

**reverse engineering:** When one starts with a known product and works backward to determine the process which aided in its development or manufacture.

**seal:** To make unavailable to the public.

**subpoena:** An order to appear or to produce documents.

**temporary restraining order (TRO):** Acourt order that enjoins certain activities or disclosures without providing the other party a chance to be heard.

**trade secret:** Information that derives independent economic value from not being generally known by competitors and that is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

**Uniform Trade Secrets Act (UTSA):** One of more than 300 uniform laws that have been developed by a nonprofit organization known as the Uniform Law Commission.