

From China to Vietnam: Trade Secrets Stolen - What Businesses Need to Know?

What would you do if your hard-earned trade secrets were suddenly stolen by your most trusted employees? Trade secret is a powerful weapon that helps businesses establish a competitive edge and achieve success. However, the threat of trade secret theft is always lurking, posing a danger to the survival of any business. Misappropriation of trade secrets not only causes financial damage to the company but also undermines its reputation, erodes customer trust, and negatively impacts the market.

In a recent ruling, the Wuhan People's Court has issued its verdict in a trade secret misappropriation case involving Dou Moumou and Li Moumou. Both individuals faced severe consequences for their unethical business practices, having stolen technical secrets from Hao Company for personal gain.

Case in China: Sophisticated Tactics of Stealing Trade Secrets

Dou Moumou and Li Moumou were once colleagues at Hao Company. Li Moumou, in his role as a technical manager, had access to the company's valuable trade secrets. Instead of safeguarding this confidential information, Li Moumou shared the secrets with Dou Moumou. Together, they established their own company and utilized the stolen trade secrets to manufacture products that directly competed with their former employer.

These illicit activities enabled them to produce and sell counterfeit products, causing significant financial losses to Hao Company and constituting a severe violation of China's Competition Law. Consequently, Hao Company has taken legal action against its two former employees.

In an attempt to defend himself against the lawsuit, Li Moumou asserted that he obtained the trade secrets through reverse engineering of products in the market. However, [evidence](#) presented in the case indicated that he had access to the relevant technical secrets during his employment at Hao Company. The court determined that the technical information acquired was a result of his position and access, not through reverse engineering, which is not considered a legitimate means of obtaining trade secrets under the law. Following a thorough examination of the evidence presented by the plaintiff, the court rejected the defendants' arguments and affirmed that the two individuals had conspired to commit trade secret misappropriation, causing significant damages to the plaintiff. Both defendants were found to have played pivotal roles in the case and were subjected to appropriate penalties.

Trade Secrets in Vietnam: How Are Infringements Handled?

Trade secrets are considered a form of intellectual property and are protected under intellectual property regulations. They encompass information derived from investment activities, financial activities, or intellectual activities that has not been publicly disclosed and possesses commercial value [*Article 4.23 of the Law on Intellectual Property*]. Trade secrets are established based on legitimate acquisition and maintaining confidentiality without the need for registration. In this regard, the mechanism for establishing trade secret rights in Vietnam aligns closely with international legal standards.

What Actions Are Considered Trade Secret Infringement?

Trade secret infringement is classified into two categories of actions, including: **(i) "unfair competition in the field of industrial property"** as stipulated in Decree 99/2013/ND-CP, amended by Decree 46/2024/ND-CP, and **(ii) "unfair competition in commerce"** as stipulated in Decree 75/2019/ND-CP.

Thus, the same act of trade secret infringement can be handled under either of two mechanisms of Vietnamese law. Typically, the choice of the appropriate enforcement mechanism depends on the specific circumstances of each case based on factors such as: **(i) The purpose of the infringement:** Whether the [infringement](#) was aimed at gaining a competitive advantage for oneself, causing harm to the infringed upon business, or not aimed at competition, such as revenge or extortion and **(ii) The nature and severity of the infringement:** Whether it caused harm to the infringed upon business, had a wide-ranging impact on the market (serious infringement), or caused little harm and had a limited impact.

From the perspective of [Intellectual Property](#), Article 127.1 of the Intellectual Property Law stipulates 6 acts considered as trade secret infringements:

- [i]** Accessing or collecting information constituting a trade secret by countering the security measures of the legal controller of that trade secret;
- [ii]** Disclosing or using information constituting a trade secret without the permission of the trade secret owner;

[iii] Breaching a confidentiality agreement or deceiving, inducing, bribing, coercing, enticing, or exploiting the trust of a person obligated to maintain confidentiality to access, collect, or disclose trade secrets;

[iv] Accessing or collecting information constituting a trade secret of an applicant in the process of applying for a business or product circulation license by countering the security measures of the competent authority;

[v] Using or disclosing a trade secret while knowing or being obligated to know that the trade secret was acquired through the infringement of trade secret rights by others;

[vi] Failing to fulfill the obligation to maintain the confidentiality of test data as prescribed.

From the perspective **unfair competition in trade**, Article 45.1(a) of the 2018 Competition Law stipulates 2 acts considered as trade secret infringements:

[i] Accessing or collecting trade secret information by countering the security measures of the information owner;

[ii] Disclosing or using trade secret information without the permission of the information owner.

What Sanctions Are Applied for Trade Secret Infringements in Vietnam?

Organizations and individuals who infringe upon trade secrets can be subject to administrative and/or civil sanctions. Specifically:

Administrative Sanctions:

From an intellectual property perspective, acts of trade secret infringement as defined in Article 127.1 of the Intellectual Property Law (IP Law) are subject to the administrative sanctions prescribed in Decree 99/2013/NĐ-CP, as amended by Decree 46/2024/NĐ-CP. Accordingly, the fine for **individuals** who infringe upon trade secret rights as prescribed in Article 127 of the Intellectual Property Law ranges from **VND 50,000,000 to VND 100,000,000**.

On the other hand, from the perspective of **unfair competition** in trade, the fine for individuals is from **VND 100,000,000 to VND 150,000,000**.

Civil Sanctions:

Civil rights arise from various grounds, including contracts, the results of creative activities that create intellectual property objects, or damages caused by illegal acts. Upon discovering an act of trade secret infringement, the trade secret owner has the right to sue and request the court to adjudicate the trade secret infringement act in accordance with civil procedure.

In Vietnam, the risk of trade secret infringement by companies or business organizations by employees and workers is quite high. This is because of the nature of their work, they can access the company's confidential information, data, and procedures. Therefore, Vietnamese law also establishes separate regulations to regulate the obligations and legal responsibilities of employees when it comes to trade secret infringement. Specifically, Article 125 of the Labor Code 2019 stipulates *that employees who disclose trade secrets, technological secrets, infringe upon the intellectual property rights of the employer, or cause serious damage or threaten to cause especially serious damage to the property and interests of the employer may be subjected to disciplinary action up to and including dismissal*.

In addition, if an employee breaches the trade secret protection agreement, he or she shall be liable for compensation in accordance with the agreement between the two parties or the provisions of civil law and other relevant laws as stipulated in **Article 4.3** of Circular **10/2020/TT-BLĐTBXH** on the handling of compensation for damages caused by breach of agreement on the protection of trade secrets and technological secrets.

Protecting Trade Secrets: Essential Actions for Businesses

Addressing vulnerabilities in trade secret protection helps businesses minimize the risk of their confidential information being exposed or **stolen**. Businesses need to establish a comprehensive security strategy to maximize the protection of their trade secrets.

[1] Non-Disclosure Agreements (NDAs)

Implementing a Non-Disclosure Agreement (NDA) can be an effective solution for protecting a company's trade secrets. These legally binding contracts establish clear confidentiality obligations between parties involved in the sharing of confidential information. NDAs effectively outline the specific information deemed confidential, the methods for protecting such information, and the consequences for breaching the agreement (including [compensation for damages](#) and [contract termination](#)). The NDA helps the signatories clearly understand the value of the confidential information and their obligations, responsibilities, and legal consequences in case of trade secret infringement. This helps deter trade secret infringements and effectively protects the interests of the business

[2] Other Actions

In addition to implementing an NDA, businesses need to adopt other trade secret protection measures because an NDA is only effective if the signatories adhere to their confidentiality obligations. If confidential information is disclosed due to other reasons (e.g., *computer hacking*), the NDA cannot protect the company

- **Establishing a robust security system:** Businesses need to set up a robust security system, such as: Restricting access to trade secrets to only those employees who truly need it. Using technical control measures like passwords, data encryption, firewalls, etc., to protect information. Monitoring and supervising access to trade secrets. Regularly updating software and security systems.
- **Raising awareness among employees:** Trade secrets are always at risk of being infringed upon by the company's own employees. Organizing training courses to raise awareness among employees about the importance of trade secrets, clearly defining acts of trade secret infringement and disciplinary measures, and encouraging employees to report trade secret infringements are important measures to enhance the internal responsibility for protecting trade secrets. This way, employees become aware of their own responsibility in protecting trade secrets and minimizing the risk of violations. Businesses need to invest adequately in trade secret protection training activities.
- **Implementing security measures:** Businesses need to control and limit the removal of documents and storage devices containing trade secrets outside the company, control the copying, printing, and storage of trade secrets, delete trade secrets when no longer needed, and protect the physical security of places where trade secrets are stored.
- **Implementing legal measures:** Documenting and preserving evidence of infringement, as well as filing lawsuits or requesting [enforcement action](#) from relevant authorities, can have a deterrent effect, prevent similar violations in the future, create legal precedents, help businesses protect their rights, and seek justice.

Final thoughts

Trade secrets are not merely information; they represent the sweat, tears, and dedication of businesses. Any act of stealing or disclosing trade secrets constitutes a violation of ethics and law, causing significant losses to businesses and negatively impacting the overall business environment.

Implementing a security strategy, no matter how comprehensive, can only help minimize, but not completely eliminate, all risks of losing trade secrets. However, it is important to remember that prevention is always better than cure

QUAN, Nguyen Vu | Partner, IP Attorney
PHAN, Do Thi | Special Counsel
HONG, Hoang Thi Tuyet | Senior Trademark Attorney

Contact

KENFOX IP & Law Office

Building No. 6, Lane 12/93, Chinh Kinh Street, Nhan Chinh Ward, Thanh Xuan District, Hanoi, Vietnam

Tel: +84 24 3724 5656

Email: info@kenfoxlaw.com / kenfox@kenfoxlaw.com