



*Happy Valentine's Day*



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## *"Tip of the Month"*

### **Protecting Trade Secret**

Put simply, a trade secret is valuable business information that has actually been kept secret. Examples of trade secrets include the secret formula for Coca Cola, a company's customer list or its list of preferred suppliers that enable the company to offer more competitive prices for its products, or specialized manufacturing practices that produce a product of superior quality. Trade secrets remain valuable as long as their secrecy is protected and as long as the information is beneficial to the holder.

As defined by the Uniform Trade Secrets Act (UTSA), a trade secret is information that (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The term "information" includes formulas, patterns, compilations, programs, devices, methods, techniques, and processes.

Trade secret law is nearly, but not quite, the same across the United States. The UTSA has been adopted by 47 US states, the District of Columbia, Puerto Rico, and the US Virgin Islands. New York, North Carolina, and Massachusetts have not adopted the Act, although New York and Massachusetts introduced bills in 2016 for doing so. North Carolina has a state law that is very similar to the UTSA and appears to borrow heavily from it.

Some information is capable of being protected either by patent or as a trade secret. One may choose patent protection for its 20-year grant of exclusive rights to the invention. In exchange for exclusivity, the patentee must disclose the information to the public. For inventions that can be reverse engineered, a patent can be valuable protection. For other information, however, maintaining it as a trade secret can be far more valuable than a patent because the trade secret ends only when the information is no longer secret. Therefore, some formulas, compositions, and manufacturing practices may remain valuable to the owner for as long as the secret is protected. The life and value of a trade secret of course depend on the quality of the program in place to maintain its secrecy—please see our other intellectual property tips on best practices for maintaining trade secrets.

Remedies under the UTSA for misappropriation of trade secrets currently include injunctive relief, money damages, and attorney's fees. The Defend Trade Secrets Act of 2016, currently under consideration in Congress, seeks to further harmonize trade secret law by creating a Federal cause of action for trade secret misappropriation, enabling the Courts to grant seizure orders, and better equipping victims of trade secret theft with legal procedures to gather electronic evidence and obtain preliminary injunctions. The final bill has not yet passed.

For help determining how best to protect your company's intellectual property assets, whether trade secrets, patentable ideas, trademarks, or copyrightable work, consult the attorneys at Mesmer & Deleault by calling (603) 668-1971 or sending an email to [mailbox@biz-patlaw.com](mailto:mailbox@biz-patlaw.com).

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