

APPROVAL

I hereby confirm that I have examined this project paper entitled:

The Uses of Trade Secret in the Technological Based Company

By

MOHD RUSYDI BIN ROSLI

I hereby acknowledge that this project paper has been accepted as part fulfillment for the degree of Bachelor of Tecnology Management (Hons) in High Technology Marketing

Signature :

Supervisor :

Date :

THE USES OF TRADE SECRET IN THE TECHNOLOGICAL BASED COMPANY

MOHD RUSYDI BIN ROSLI

Report submitted in fulfillment of the requirement for the degree of Bachelor of
Technology Management (Hons) in High Technology Marketing

Faculty of Technology Management and Technopreneurship

Universiti Teknikal Malaysia Melaka

JUNE 2013

DECLARATION OF ORIGINAL WORK

I, MOHD RUSYDI BIN ROSLI

“I hereby declare that the work of this exercise is mine except for the quotations and summaries that have been duly acknowledged.”

Signature :

Name :

Date :

DEDICATION

This Research Paper is lovingly dedicated
to my respective parents
who have been my constant source of inspiration.
They have given me the drive and discipline to tackle any task with enthusiasm and
determination.
Without their love and support this project would not have been made possible.

ACKNOWLEDGEMENT

Alhamdulillah. Thanks to Allah, whom with his willing giving me an opportunity to complete the research paper entitled “The Uses of Trade Secret in the Technological Based Company”. I would like to thank to my supervisor of this project, Dr. Norain binti Ismail for the help and advice in making my Projek Sarjana Muda (PSM) successful. He contributes and inspired me a lot to work in this project. His willingness to motivate us contributed tremendously to our project.

Moreover, I would like to thank the authority of University Teknikal Malaysia Melaka (UTeM) for providing us, the students with a good environment and facilities to complete this project. Also, I would like to take this opportunity to thank to the Centre of Faculty of Technology Management and Technopreneurship for offering this subject. It gave me an opportunity to participate and learn about the research project which is valuable for an academic purpose.

Finally, I want to give a grateful thanks to my families and friends for their understandings and supports on me in completing this project. Their supports make me strength and do not know how to give up. All the person that being mentioned had help me a lot in completing my PSM.

Thank you so much.

ABSTRACT

There is more technological company being open recently. It is because of the improving in technology. The technology nowadays can become one of the sources of income in business. In the technology based company, there are a lot of confidential information that need to be kept as secret. The confidential information can be said as trade secret. Trade secret is defined as any formula, pattern, devices or complication of information which is used in one's business and which gives him an opportunity to obtain an advantage over competitor who do not know or use it (Andrew Beckerman-Rodau, 1996). In the company, the trade secret can be stealing by other. There are people had their intention to steal the trade secret. There are a lot of threats even the company employee itself. So, the protection of trade secret is important. The use of trade secret in the technological based company is studied. The research is studied on the effectiveness of the trade secret and the trade secret protective measure that been taken by the company. The use of qualitative method that is interview is chose to complete the research. Melaka become the area where there are a lot of technological based companies as the location of the research. The data will be collected and analyze from the interview with the company representative. The finding of the research is from the respond of the company representative in the interview.

ABSTRAK

Terdapat banyak syarikat berteknologi tinggi dibuka kini. Ia disebabkan oleh peningkatan dalam teknologi. Teknologi sekarang ini boleh menjadi satu daripada sumber pendapatan dalam perniagaan. Di syarikat yang berdasarkan teknologi, terdapat banyak maklumat sulit perlu disimpan sebagai rahsia. Maklumat sulit boleh dikatakan sebagai rahsia perdagangan. Rahsia perdagangan didefinisikan sebagai sebarang formula, corak, alat atau komplikasi maklumat yang mana digunakan di perniagaan seseorang dan yang memberi dia satu peluang memperoleh satu kelebihan atas pesaing yang tidak tahu atau guna ia (Andrew Beckerman-Rodau, 1996). Dalam syarikat itu, rahsia perdagangan boleh dicuri oleh orang lain. Ramai yang mempunyai niat untuk mencuri rahsia perdagangan. Terdapat banyak ancaman walaupun pekerja syarikat sendiri. Jadi, perlindungan rahsia perdagangan penting. Penggunaan rahsia perdagangan di yang teknologi syarikat berpangkalan dikaji. Penyelidikan dikaji di keberkesanan rahsia perdagangan dan langkah perlindungan rahsia perdagangan yang pernah diambil oleh syarikat itu. Penggunaan kaedah kualitatif yang temu duga dipilih untuk menyiapkan penyelidikan. Melaka menjadi kawasan di mana terdapat syarikat berasaskan teknologi sebagai lokasi penyelidikan. Data akan dikumpul dan analisis dari temu duga dengan wakil syarikat. Keputusan penyelidikan adalah daripada jawapan wakil syarikat dalam temu bual itu.

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LIST OF ABBREVIATION AND SYMBOL

ABBREVIATION	TITLE
SBA	Small Business Administration
UTSA	Uniform Trade Secret Act
WTO	World Trade Organization
TRIPS	Trade-related Aspect of Intellectual Property Rights
TCP	Total Control Procedure

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NO	TITLE
1	Interview questionnaire question

CHAPTER 1

INTRODUCTION

1.1 Introduction

In new era of business, the improving skill in expertise becomes bigger than ever. People are more likely to make something different than other. It is to make sure that they are archiving their goals and becoming the only one with the expertise. There are many kind of secrecy company have that really important and have value to the company. In nowadays business, the law protects company's skills and expertise with special protection. With this kind of protection, there are more companies that can improve their brand although they have the same kind of product. Trade secret makes the company become success in their branding strategies.

According to National Conference of Commissioners on Uniform State of Law (1985), trade secret means information, including a formula, pattern, complication, program device, method, technique or process that derives independent economic value, actual or potential from now being generally known to and not being readily

ascertainable by proper means or by other person who can obtain economic value from the disclosure or use.

Andrew Beckerman-Rodau (1996), restatement of Torts define that any formula, pattern, devices or complication of information which is used in one's business and which gives him an opportunity to obtain an advantage over competitor who do not know or use it. It related to all information such as formula compound, manufacturing process, persevering material, machinery and customer list.

1.2 Problem Statement

There are a lot of company that have difficulty in entering the market and mostly the new business company. The company disclosing their information without a non-disclosure agreement becomes the threat to the company. If the trade secret or secrecy in the companies is not protected will make the companies fall down. In the company, it does not only depend on non-disclosure agreement only but there are several of ways that had been done by the company in order to keep the trade secret stay as secrecy.

The research of United State Small Business Administration (SBA) state that mostly 50% businesses fail in the first year. It is because of the company does not take their precaution on preserving and protecting their trade secret. Most of the company does not know the important of the trade secret. The secrecy in the company is very important to make the company unique and competitive. In the technological based company, the trade secret must be kept and protected to the maximum level. The precautionary methods must be taken to make sure the company can secure their secrecy.

The problems stated here is the company does not consider the trade secret really seriously. They do not know how important the trade secret is in making their business more advances and to be the people's choice. Companies also do not know how to ensure that there is no leaking of their trade secret information especially when the company has many employees. In the new era, people will do anything to compete and destroy their competitor. Many various ways have been taking in order to make sure that the trade secret is protected. Here, the trade secret can become role in making the company become more secure and aware that keeping the secret is important.

1.3 Objectives

1. To identify the important of trade secret.
2. To examine the use of the trade secret in technological based company.
3. To investigate the ways of protecting the trade secret in technological based company.

1.4 Scope

The scope of this study is to evaluate the use of trade secret in technological based company. In the research, the researcher will investigate the important of trade secret in the company, and how it is used and the ways of protecting the trade secret in

the technological based company. Every company has their own confidential information that needs to be secured so that there will be no other parties who have the attention to steal the secrecy especially the sensitive information. Several methods have been use by the company in order the trade secret is save.

The respondent of this research is the company manager. There will be qualitative research where there will be interview about the trade secret in the choosing company. The company that been chosen is the technological base company only. The considered companies that will be choosing are CTRM Aero Composites Sdn. Bhd, Weistech Solution Sdn. Bhd and Spring Glory Sdn. Bhd.

1.5 Limitation

In this research, there are several limitations. Firstly, the study is to evaluate the important of trade secret in the company. The use of trade secret also will be researched to know how to secure and the ways of trade secret is protected. The next limitation is the research only is done at the technological based company. Any non-technological based is out from the discussion in this research.

Last but not least, limitations that need to consider are the research must not touch any kind of sensitivity about the secrecy that make the company have to open the secrecy. It is because the company knows that it will become threat if there is secrecy that opens up although it is for education purpose.

1.6 Summary

Trade secret is important in every company, especially in the technological based company. Every company needs to take caution in protecting their trade secret. Most of the companies do not know that they need to concern about the trade secret. The effectiveness of trade secret especially in technological based companies will make every company more competitive.

In chapter 1, it will show briefly on what the research is all about. It is only about the introduction of the research. It will guide on how the research will be conducted.

CHAPTER 2

LITERATURE RIVIEW

2.1 Introduction

The purpose of this literature review is to give a general overview about the use of trade secret in technological based company. Many theories have explained the trade secret. There are a lot of explanations about trade secret that are not generally known by most people. There are many kinds of the use of trade secret that. In business, trade secret is important to make sure that the company that has their competitive advantage compared to other company. The technological based company especially has their own ways in preserving and protecting the trade secret not to fall to the other hand.

2.2 Background I

2.2.1 Trade Secret

In the book *Securing Intellectual Property: Protecting Trade Secret and Other Information Assets* (Laura Colantoni, 2009) trade secret is the form of intellectual property. Trade secret is also valuable information. Trade secret is more than information. It is the only way that people can own the concept and idea. Trade secret has its own legal protection and once information is secret, it cannot be reached by others. It can easily slip away and be stolen. Trade secrets have their competitive advantage where the person holding the secret only knows the secret.

In 40 states in the world, there are uniform laws regarding the trade secret. Trade secret law is the Uniform Trade Secret Act (UTSA) where these laws have their own law that will protect the trade secret. Trade secret is much broader than any kind of other information such as technical or nontechnical which has been kept secret.

In the book ‘*Securing Intellectual Property: Protecting Trade Secrets and Other Information Assets*’ (Colantoni, 2009, p.9), to become the trade secret, there are three characteristics that are used to evaluate the trade secret.

1. **Unavailability:** The information must not be generally known or available. The information that can be found from an available public source cannot become the trade secret.
2. **Value:** The information must have the potential economic value. In order to prove that the information is trade secret, the company especially must show how the information confers an economic advantage in the marketplace over those that do not have it.

3. Protection: A company claiming the trade secret must prove that the company uses reasonable measure to maintain its secrecy. This means that to prove a trade secret, the company must make an affirmative showing that at all times it has used and is using reasonable confidentiality procedures and protections.

With this kind of characteristic, the companies that have all of this can approve the information as the trade secret. The laws of trade secret in UTSA also use this as a test before it can be declared as trade secret. The trade secret can last forever. As long as it remains secret, the secret will be considered trade secret.

In addition, in a book of 'Trade Secret Litigation and Protection in California' (Randall E. Kay, 2009) states that a trade secret is commonly defined as any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. Trade secret protection is very limited. A trade secret holder is only protected from unauthorized disclosure and use of the trade secret by others and from another person to obtain the trade secret by some improper means.

2.3 Background II

2.3.1 Trade Secret

In the journal *The Choice between Patent Protection and Trade Secret Protection: A Legal and Business Decision* Trade state that secret law traditionally protected secret processes used to manufacture products. However, modern trade secret law provides protection for virtually anything maintained in secret by a business enterprise that gives it a competitive advantage in the marketplace. This can include ideas, manufacturing processes, manufacturing drawings, software, customer lists, marketing data and pure information (Andrew Beckerman-Rodau, 2002).

In the journal, unlike patent law, no specific categories exist to define the object benefit from the protection of trade secrets. Almost everything is kept in secret, which is not generally known to competitors and provides a competitive advantage is potentially protectable by trade secret law. This includes virtually everything in the field of patentable subject matter. However, it is also many other things which are clearly not eligible for patent protection.

Brian J. Love & Christopher B. Seaman (2012) state that in their journal of 'The Trade Secret Mode' that trade secrecy and patent right have been considered as mutual exclusive. The trade secrets are considered on secrecy. It gave some information and idea on choosing the right method between trade secret and patent. Uniform Trade Secret Act that have been use by 46 states defines trade secret as information that derives independent economic value from not being generally known to and not being readily ascertainable by proper means by other person who can obtain economic value from its disclosure or use.

Trade secret law is the ugly duckling of intellectual property. It relies on secrecy to promote innovation if secrecy prevents sequential creativity. It can reverse engineering to facilitate dissemination, despite the risk of reverse

engineering trade stings to hide secret information more aggressively and transport its products research process that can keep the public. The journal 'Trade Secrecy, Innovation and Requirement of Reasonable Secrecy Precaution' by Robert G. Bone (2010) tells about how to protect the trade secret as the can. The secrecy in the company is valuable that can produce huge incomes. There are lots of ways to keep the trade secret as secrecy. The non-disclosure agreement helps in controlling the company employee so that the trade secret will not slip away. The competitor will become more aggressive to get the secrecy in the firm if the firm more protected their secret.

There are arguments in economic justification regarding the trade secret protection:

1. It promotes incentives to create in order to yield a net benefit.
2. It encourages information to transfer by the use of licensing rather than theft.

According to the journal of 'Why Do We Have Trade Secret' by Michael Risch (2007), trade secret may consist of any formula, pattern, device or complication of information which is used in one business and which gives him an opportunity to obtain an advantage over competitor who does not know or use it. Trade secret misappropriation involves improper means used to acquire or use a trade secret. The trade secret law lists three different acts:

1. Acquisition of a trade secret merely by obtaining the information.
2. Disclosure of the trade secret merely telling the information to another.
3. Use of the trade secret using the information to one's advantage.

R.W. O'Donnell (2008), in the 'Trade Secret Protection' journal stated that the UTSA defines a trade secret as information, including a formula, pattern, compilation, program, device, method, technique or process that:

1. Drives independent economic value, actual or potential from not being generally known to and not being readily ascertainable by proper means