



Seeking Trade Secret Protection? Don't Just Rely on a Label.

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Eric Ostroff

Creativity is a powerful asset in business, and there is no reason to disregard this way of thinking when trying to protect your company's proprietary information.

A few weeks ago, while visiting New York, I needed to buy some lip balm to deal with the dry weather. After looking at the packaging, I was surprised to see "trade secret perfume" listed among the ingredients. Without a doubt, this lip-balm company was thinking creatively when it came up with its packaging and ingredients list. From a marketing perspective, the mystery surrounding "trade secret perfume" could tempt a prospective buyer. But I am more interested in whether labeling an ingredient as a trade secret offers any legal benefits.

Formulas and recipes, like the perfume formula, can qualify as trade secrets. When a court concludes that information is a trade secret, the law offers protections against its improper use or disclosure. If someone steals or improperly uses your trade secret, you can sue for either an injunction or money damages.

To enjoy these legal protections, a business owner must do more than just label something as a trade secret. Under most states' laws, the person must take reasonable measures to protect proprietary information before a court will recognize it as a trade secret. Simply labeling a formula or other document as a trade secret is not enough. (There are other legal prerequisites that must be satisfied before information becomes a trade secret. Consult an attorney for help in this area.)

When this label is combined with other protections, the label strengthens the case. For example, consider the perfume formula in my lip balm. If the company disclosed the formula only to those employees who needed it to do their jobs — and required that those employees sign a confidentiality agreement — their lawyer could use the label to bolster their legal argument if someone steals the formula and the company



files a trade-secret-misappropriation lawsuit.

Most companies do not have secret formulas they are trying to protect. But just about all companies have documents containing the companies' proprietary information. Just like the "trade secret perfume" label, these documents can be protected through a document confidentiality policy, which would require that these documents be labeled as "confidential" or "trade secret." This, combined with other reasonable protections, can boost an owner's legal argument.

In the end, however, companies looking to protect their proprietary information should focus first on more substantive protections, such as confidentiality agreements and restricted access. When these are in place, the business can then use creative thinking, like the "trade secret perfume" company, to enhance its defensive measures. As always, those with questions about protecting proprietary information can consult with a qualified attorney.