

*Creating Value For Our Clients*

## Trade Secret Audits

Seyfarth Shaw LLP has decades of experience counseling clients on a myriad of issues relating to covenants not to compete and trade secrets. Often, this can involve expensive and time-consuming litigation when companies are forced to protect their rights.

Seyfarth Shaw understands that these issues often do not receive the attention that they deserve. As companies face increasing competitive and financial pressures, management is understandably consumed with running the day-to-day operations of the business and working to achieve business objectives and maximize the bottom line.

As a result, it is not uncommon for companies to find themselves in situations where important assets are overlooked or taken for granted. Yet, those same assets can be lost or compromised in a moment through what is often benign neglect. Authoritative sources estimate that companies lose hundreds of billions of dollars as a result of trade secret theft. At the same time, companies sometimes find themselves, through poor controls, exposed when they inadvertently obtain others' trade secrets.

To address these recurrent issues, Seyfarth Shaw helps clients protect their important assets and effectively manage risk by conducting Trade Secret Audits. Our experience has shown that companies gain tremendous value by taking a proactive, systematic approach to assessing and protecting their trade secret portfolios through a Trade Secret Audit. As part of a comprehensive Trade Secret Audit, we work with you in identifying valuable information assets and evaluate the strengths and weaknesses of your company's protections. We recommend corrective measures to help ensure your company's assets are adequately protected, including assisting with effectively managing and protecting computer-stored data. Our thorough approach also allows your company to reduce exposure for trade secret theft claims.

Our audit teams are composed of attorneys with significant experience drafting trade secret protection agreements and litigating covenant not to compete, trade secret, and computer fraud and abuse cases. We are proficient in conducting Trade Secret Audits and can also include other professionals with critical computer/electronic data storage experience. Team members provide a Trade Secret Audit that is tailored to your company's particular needs.

## Achieving Business Results Through Trade Secret Audits

A Trade Secret Audit is a proactive and dynamic investment that many companies determine is an important part of a broader plan aimed at meeting their business objectives. Seyfarth Shaw is well known for its ability to successfully prosecute and defend covenant not to compete, trade secret, and computer fraud and abuse suits. But it is our role as a strategic business advisor in conducting Trade Secret Audits that distinguishes our comprehensive approach to address and meet our clients' objectives.

## Determining the Scope of the Trade Secret Audit

At the outset of a Trade Secret Audit, we work with you to determine the audit scope. Our team members take the time to learn more about your business, help identify your company's assets that are valuable and worthy of protecting

(as well as your existing security protections), and identify your past trade secret issues and concerns, as well as your overall objectives related to your company's trade secrets. We also work with our Patent Group and other intellectual property attorneys to tailor the most appropriate kind of protection for your particular IP assets. As part of our audits, we offer our experience with computer fraud and security issues, including managing and protecting computer-stored data.

Depending on the audit scope and focus that you select, our team members provide you with a clear plan addressing the issues that are identified for your company.

### *Establishing Effective Protective Measures and Processes*

Our Trade Secret Audits have uncovered a number of issues companies consistently face that often simply require an established process to effectively protect trade secrets. We work with you to determine a successful process for your company.

We have found that companies often have at least some policies in place to help establish protective measures. The measures are often inadequate, difficult to implement or understand, or are ineffective. We work with you to develop effective policies that fit your business and organizational culture. The resulting policies are useful and easy to administer and protect your company's trade secrets.

### *Loss of Trade Secrets and Exposure to Misappropriation Claims Due to Poor Controls or Inadvertent Disclosure*

**Information Assets.** During the course of your audit, our team members work closely with your business teams to identify your company's information assets, including identifying what may qualify as a trade secret, help classify the importance of the assets, and assess how your company protects those assets. As part of the identification and classification of your company's information assets, we rely on our extensive intellectual property experience to tailor the most appropriate kind of protection for particular IP assets, such as copyright, trademark, patent, or trade secret protection. This process includes identifying risk areas where information assets may be susceptible to loss.

**Protection Agreements and Training.** Our team members review your company's various protection agreements, including employee confidentiality agreements, employment agreements and non-competition/non-solicitation agreements, technology use agreements, invention assignment agreements, as well as third party non-disclosure agreements, to ensure that they appropriately safeguard your company's trade secrets. We also provide training tailored to your business for management and other employees concerning effective procedures to maintain security for your company's trade secrets.

**Physical and Data Security.** We audit physical and computer data security practices and make recommendations to help ensure adequate security and prevent theft. This often involves making recommendations concerning facility access, security layout, computer access, and protection of electronic data. Our team members work with other professionals to provide best practices concerning managing and protecting computer-stored data.

### *Evaluating Trade Secret Practices and Providing Assessments and Recommendations*

**Employee Mobility.** We help your company develop appropriate procedures for addressing trade secret theft claims, including effective screening procedures for employees who may be violating your company's policies as well as those of previous employers. We also help your company implement measures to instruct employees of their obligation to protect trade secrets, including departing employees. We also develop procedures to properly screen job applicants for prior confidentiality and restrictive covenant agreements, and develop procedures for safeguarding the company from the improper actions of the rogue new hire.

## Developing an Effective Process Plan

Our client, a *Fortune* 100 company, had a number of employees leave to join a competitor and take proprietary, trade secret information on their way out the door. While we were able to obtain a very successful litigation result, including a permanent injunction, the company was still faced with the possibility that a similar incident could occur in the future.

- ▶ We counseled the client in ways to effectively modify their protection agreements, share the litigation outcome with their employees and customers for maximum effect, and better posture future litigation, including enhancing their trade secret protections.

*Result: The in-house counsel was pleased not only with an excellent litigation result, but that we provided them with an effective process plan to assist them in improving the company's internal processes going forward, including methods to bolster future offensive trade secret misappropriation claims.*

## Establishing More Effective IP Protections

Company officials for a large technology company were concerned that they did not have sufficient processes in place that would adequately protect their R&D data and intellectual property assets.

- ▶ We conducted a detailed audit for the client, including on-site meetings with its various business groups, reviewing a number of internal procedures and external documents. During this process, we assisted them in identifying and classifying their intellectual property assets and outlined the ways in which they could protect their assets going forward. Following the meetings, we assisted them in tightening their internal procedures and controls through formal policy changes and updated confidentiality agreements which provided additional protection for their assets. We also assisted them on a going forward basis with offensive trade secret theft claims, including the drafting of appropriate cease and desist letters.

*Result: The client now has a better understanding of its trade secrets and related intellectual property assets, and has implemented effective processes to protect those assets. In addition, the individuals who come into contact with those assets have a better understanding of their value and the importance of protecting them.*

We assist your company in developing successful methods for handling departing employees by ensuring that there are effective policies requiring the return of all company property and exit interviews providing explicit instructions concerning their continuing duties to your company.

**External Relationships.** Third party, government, and consultant relationships involving trade secrets present a unique set of issues. We help your company ensure that it has effective processes and agreements in place to protect the company's assets in these specific contexts.

## Strategic Counseling and Transactional Matters

While we have addressed a sampling of the issues that can arise during the course of a Trade Secret Audit, related specialized services that we provide our clients in this area also include:

- Drafting your intellectual property and trade secret corporate policies, including computer security policies
- Preparing, reviewing, and/or revising employee restrictive covenant agreements, including non-competition or non-solicitation agreements as applicable, in all states
- Preparing, reviewing, and/or revising non-disclosure agreements for use with vendors and other third parties, including governmental entities
- Counseling and training management and other employees on the importance of protecting trade secrets, including web-based training modules

- Managing and working to protect computer-stored data, including responding to emergency issues related to computer fraud and security breaches
- During the Trade Secret Audit and when litigation arises, our skilled litigators and eDiscovery attorneys act swiftly to address injunctive relief requests and respond to sensitive document preservation issues to protect our clients' interests

Our Trade Secret Audit can provide a tremendous value to your company. Properly identifying and classifying your company's information assets and establishing effective protection for those assets will help your company maintain and enhance their value. The cost of losing trade secrets and other intellectual property can be immense. Our Trade Secret Audit will provide your company with a thorough, proactive assessment of your company's information assets. Following our audit, we provide an assessment memorandum that identifies items reviewed, conclusions, and our recommendations for more effective processes.

## About Seyfarth Shaw

Seyfarth Shaw was founded in 1945 by three lawyers and has grown to more than 750 lawyers across ten offices. Our practice spans the United States and, through our affiliations and European office, provides our clients with a global presence. We handle issues for our clients in all key areas: corporate, employee benefits, litigation, labor and employment, and real estate, among others.



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