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EXECUTIVE SERIES:
INTELLECTUAL PROPERTY



Practical Strategies for Defining, Protecting, and Enforcing Trade Secrets

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Trade Secret Litigation is Popular

 LexisNexis®

Trade Secret Filings Hit Record High In 2025, Report Finds

January 28, 2026


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Author: Ivan Moreno

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1. Trade Secret Law: *core definition*
2. Statutory frameworks: *UTSA (state) vs. DTSA (federal)*
3. Prosecuting a trade secret claim: *elements, proof, and remedies*



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What is a Trade Secret?

- Information that derives independent economic value from not being generally known or readily ascertainable by proper means.
- Must be subject to reasonable efforts to maintain secrecy.
- (Uniform Trade Secrets Act, §1(4); 18 U.S.C. §1839(3))



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Key Trade Secret Concepts

- Information can include technical, business, or financial data.
- Reasonable efforts may include NDAs, access restrictions, and security controls.
- Reverse engineering and independent development are generally lawful.
- (Uniform Trade Secrets Act, §1; 18 U.S.C. §1839(6))



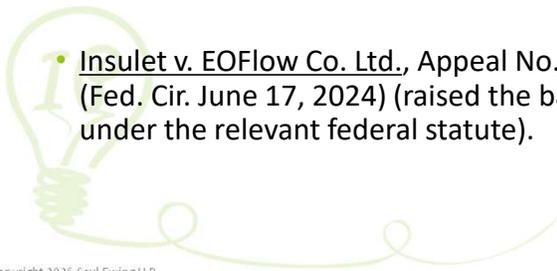
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UTSA – State Trade Secret Framework

- Model law adopted (with variations) by most states.
- Defines trade secrets and misappropriation.
- Provides civil remedies and statute of limitations.
- (Uniform Trade Secrets Act, §§1–4)



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- Insulet v. EOFlow Co. Ltd., Appeal No. 2024-1137, ---F.4th---, 2024 WL 3016208 (Fed. Cir. June 17, 2024) (raised the bar for obtaining a preliminary injunction under the relevant federal statute).

DTSA – Federal Trade Secret Law

- Creates federal civil cause of action for trade secret misappropriation.
- Applies to secrets related to interstate or foreign commerce.
- Does not preempt state trade secret law.
- (Defend Trade Secrets Act, 18 U.S.C. §1836)



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UTSA vs. DTSA — Key Differences

- Jurisdiction: State court (UTSA) vs. federal court access (DTSA).
- DTSA provides ex parte civil seizure remedy.
- DTSA includes whistleblower immunity provision.
- (Defend Trade Secrets Act, 18 U.S.C. §§1836(b)(2), 1833(b))



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Why These Differences Matter

- Federal forum may offer procedural advantages.
- Seizure remedy can prevent dissemination in extraordinary cases.
- Employers must comply with whistleblower notice requirements.
- (Defend Trade Secrets Act, 18 U.S.C. §§1833(b), 1836(b)(2))



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Elements of a Trade Secret Claim

- Existence of a trade secret.
- Reasonable measures to protect secrecy.
- Misappropriation by improper acquisition, use, or disclosure.
- (Uniform Trade Secrets Act, §1; 18 U.S.C. §1839(5))



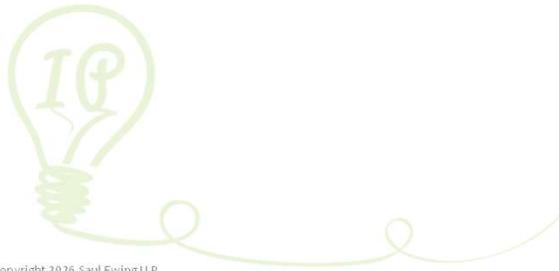
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Pleading and Proof Considerations

- Trade secrets must be identified with reasonable particularity.
- Evidence of access and misuse is critical.
- Forensic and document evidence often decisive.



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Injunctive Relief

- Courts may enjoin actual or threatened misappropriation.
- Must show likelihood of success and irreparable harm.
- (Uniform Trade Secrets Act, §2; 18 U.S.C. §1836(b)(3)(A))



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DTSA Ex Parte Seizure Remedy

- Extraordinary remedy to prevent dissemination of trade secrets.
- Available only with strict statutory safeguards.
- (Defend Trade Secrets Act, 18 U.S.C. §1836(b)(2))



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Damages and Monetary Remedies

- Actual loss and unjust enrichment.
- Reasonable royalty as alternative measure.
- (Uniform Trade Secrets Act, §3; 18 U.S.C. §1836(b)(3)(B))



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Enhanced Damages and Attorneys' Fees

- Exemplary damages for willful and malicious misappropriation.
- Fee shifting for bad faith or willful misconduct.
- (Uniform Trade Secrets Act, §3(b); 18 U.S.C. §1836(b)(3)(C)-(D))



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Federal–State Relationship

- Trade secret law traditionally governed by state law.
- DTSA supplements but does not preempt state remedies.
- (Defend Trade Secrets Act, 18 U.S.C. §1838; Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470 (1974))



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Why These Requirements Matter

- Strong secrecy measures strengthen litigation position.
- Failure to document protections can defeat claims.
- Trade secret law rewards proactive protection.



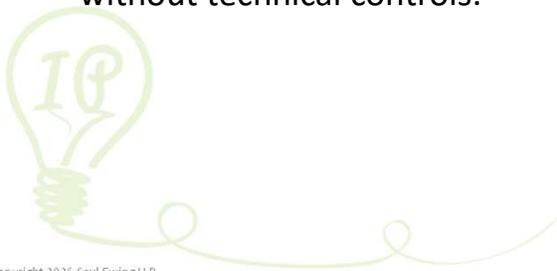
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Practical Do's & Don'ts (Short List)

- Do: implement layered access controls, sign robust NDAs, record who has access, run forensic audits when suspected.
- Don't: overclaim trade-secret status for every asset (risk of dismissal), ignore preservation obligations, or rely solely on nondisclosure without technical controls.



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Trade Secret Damages and
Appian Corp. v. Pegasystems, Inc.

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Trade Secret Damages—Three Kinds

- **Actual loss damages** is a traditional common law tort remedy measured by the plaintiff's losses due to misappropriation. Typically thought of as lost sales or profits, but the concept is broader.
- **Unjust enrichment damages** measures the benefit conferred on the defendant due to the misappropriation.
 - Can be in addition to actual loss, so long as there is no double-counting.
- **Reasonable royalty damages** aim to derive a usage-based payment that would have been set by in a hypothetical negotiation between the trade secret owner (as a willing licensor) and the misappropriator (as a willing licensee) for the misappropriator's use of a trade secret.

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Appian Corp. v. Pegasystems, Inc.—\$2B Jury Award

- Unjust enrichment damages.
- Jury awarded \$2 billion.
- On appeal, the Court of Appeals of Virginia concluded there were numerous errors, including as to liability and also to damages. *Pegasystems, Inc. v. Appian Corp.*, 904 S.E. 2d 247 (Va. Ct. App. 2024).
- On further appeal, the Supreme Court of Virginia has affirmed the appeals court and remanded the case for a new trial. *Appian Corp. v. Pegasystems, Inc.*, Record No. 240736, --- S.E.2d ----, 2026 WL 59845 (Va. Jan 8, 2026).

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Appian v. Pegasystems—Facts

- Case involves companies engaged in the business process management (BPM) industry.
- Appian and Pega are competitors and “industry leaders” in the BPM field.
- Both companies offer platforms that enable third party business customers to build programs or applications (apps) that automate processes, such as fulfilling orders or opening new customer accounts.
- Appian’s theory was that that Pega misappropriated its trade secrets to copy and steal Appian's user-friendly features and attract a broader base of customers.

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Appian v. Pegasystems—Facts

- Pega used a “mole” —a software developer named Youyong Zou—who had access to Appian’s platform through his employment employed at the time by non-party Serco.
- Zou's role within Serco gave him access to Appian's BPM platform, which Serco licensed from Appian.
- Over 2½ years, Zou provided intelligence of Appian’s BPM to Pegasystems in three primary ways: (1) preparing video tutorials of himself building applications in Appian; (2) participating in live presentations with Pegasystems employees to the same effect; and (3) downloading and sharing confidential Appian documentation with Pegasystems.

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Appian v. Pegasystems—Facts

- Appian learned of Pegasystems’ attempts at corporate espionage in 2020 from an ironic source.
- Mr. Petronio, Pegasystems’ head of competitive intelligence in 2010, had initiated the campaign to uncover Appian’s trade secrets.
- Mr. Petronio was ultimately laid off by Pegasystems in 2015, and then was subsequently hired by Appian, eventually becoming its Senior Director of Market Intelligence and Strategy.
- In 2020, Petronio disclosed the work he had done at Pegasystems with Zou to Appian's counsel.

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Appian v. Pegasystems—Trial

- Appian subsequently filed several claims against Pegasystems and Zou, including claims for misappropriation of trade secrets under the Virginia Uniform Trade Secrets Act (“VUTSA”).
- At the close of trial—which ran for seven weeks—the jury found for Appian, awarding it an eye-popping \$2 billion in damages.
- Pegasystems moved to set aside the verdict, but the trial court denied the motion. Appeals to the Court of Appeals of Virginia and to the Virginia Supreme Court followed.

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Appian v. Pegasystems—Damages Error #1 (law)

- Jury Instruction #14 regarding unjust enrichment damages placed the burden of apportionment on defendant Pegasystems:

If you find that plaintiff Appian has proved by greater weight of the evidence its claim for misappropriation of trade secrets against defendant Pegasystems, you must find your verdict for Appian and decide the issue of damages as to Pegasystems. You may award the amount of unjust enrichment caused by misappropriation.

For unjust enrichment, Appian is entitled to recover Pegasystems' net profits. Appian has the burden of establishing by greater weight of the evidence Pegasystems' sales; ***Pegasystems has the burden of establishing by greater weight of the evidence any portion of the sales not attributable to the trade secret or trade secrets and any expenses to be deducted in determining net profits.***

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Appian v. Pegasystems—Damages Error #1 (law)

- Jury instruction #14 regarding unjust enrichment damages placed the burden of apportionment on defendant Pegasystems.
- Multiple sources of Virginia state law provided that the plaintiff always bears the burden of proof on damages.
- Instruction 14 improperly shifted the burden onto the defendant (here, Pegasystems) to prove the portion of damages that were ***not attributable*** to the misappropriation.
- This was burden-shifting was reversible error, warranting remand for a new trial “in which the jury is instructed that the complainant bears the burden of proving proximate cause between the misappropriation and any unjust enrichment damages.”

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Appian v. Pegasystems—Damages Error #2 (facts)

- Pegasystems had been improperly barred from adducing evidence showing that certain of its products were unrelated to the misappropriation.
- Appian served Interrogatory No. 18, which asked Pegasystems to “[i]dentify all revenues received by Pegasystems for each fiscal year from 2012 through 2021 relating to ***Pega 6.3, Pega 7.0*** and any subsequent ***version...***”

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Appian v. Pegasystems—Damages Error #2 (facts)

- After some motion practice, Pegasystems eventually answered the interrogatory.
- Though—critically—Pegasystems lodged a number of objections, including that the interrogatory sought ***irrelevant information*** from products whose “derived revenue . . . was ***wholly unrelated*** to any competitive situation with Appian, and such revenue is not relevant to Appian's claims.”
- Pegasystems responded by further noting that it did not “record or report revenue, or any associated costs and expenses . . . based on the ‘version’ of the product sold (e.g., Pega 6.3, Pega 7.0).” Pegasystems then cited to its annual Form 10-K filings and quarterly Form 10-Q filings.

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Appian v. Pegasystems—Damages Error #2 (facts)

- The trial court saw Pegasystems’ ROG 18 response to identify mean that it had “essentially given up” any defense that it earned significant revenue from non-BPM platform products.
- Pegasystems proffered evidence that some of its revenue was earned from the sale of non-BPM platform products that had no connection to the alleged wrongdoing.
- Pegasystems proffered the testimony of its CEO that “more than 50 percent of Pega[systems’] revenue was derived from customers for these other [non-BPM] products”.
- Proffered similar testimony from its CTO and damages expert.

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Appian v. Pegasystems—Damages Error #2 (facts)

- Trial court had abused its discretion in concluding that Pegasystems' ROG 18 response meant it had given up on its apportionment case, and excluding its evidence and argument.
- Evidence that certain sales were attributable to non-BPM products was outside the scope of Interrogatory 18, which asked for "versions" of specific products (and which information Pegasystems did not track by version number).
- Remand on these issues was appropriate so that damages could be determined in line with correct jury instructions and the full scope of allowable evidence.

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Appian v. Pegasystems—Damages Playbook

- ***Discovery objections matter.*** Pegasystems' objections as to Interrogatory 18, especially as to relevance, laid the foundation for its successful appeal.
- ***For damages, be prepared to show your work.*** Pegasystems had been prepared to parse out which products and revenues had been attributable to the alleged misappropriation, and which had not.

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Protecting Trade Secrets Through Confidentiality and Non-Solicitation Agreements, and Employer Policies

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Avoiding the Legal and Practical Problems of Remote Work

- Clearly and repeatedly communicate expectations to employees.
- Apply remote work policies uniformly to all similarly situated employees.
- Draft and implement an effective, written remote work policy.
- Ensure that all employees are bound by appropriate confidentiality agreements and other restrictive covenants.



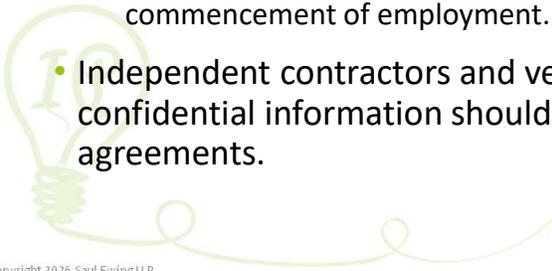
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Confidentiality Agreements

- Use widely with virtually every employee.
- Agreements should:
 - be executed as a condition of employment; and
 - be supported by adequate consideration if not executed prior to the commencement of employment.
- Independent contractors and vendors who may have access to confidential information should also be subject to confidentiality agreements.



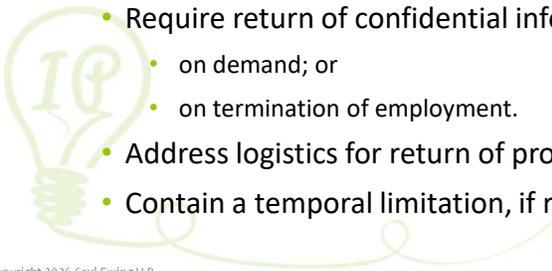
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Confidentiality Agreements

- The agreement should:
 - Define what constitutes confidential information.
 - Prohibit the use or disclosure.
 - Contain federal Defend Trade Secrets Act whistleblower language.
 - Require return of confidential information and other company property:
 - on demand; or
 - on termination of employment.
 - Address logistics for return of property.
 - Contain a temporal limitation, if required by applicable law.



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Customer Non-Solicitation Agreements Should...

- Be no broader than necessary to protect the employer's legitimate business interests.
- Not more than 1-2 years in duration. (generally)
- Be limited to customers with whom the employee had business contact or about whom the employee obtained confidential information.
- Be limited by geographic scope, if required by law in the jurisdiction.
- Be limited to solicitation for competitive purposes.

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Employee Non-Solicitation Agreements Should...

- Be no broader than necessary to protect the employer's legitimate business interest.
- Not be more than 1-2 years in duration. (generally)
- Be limited to employees with whom the employee had direct or indirect business contact or about whom the employee obtained confidential information.
- Be limited by geographic scope, if required by law in the jurisdiction.

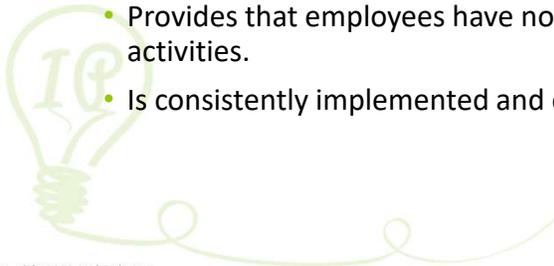
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Efforts to Maintain Secrecy – Confidentiality Policies

- An effective confidentiality policy:
 - Defines confidential information, including through examples.
 - Prohibits the use or disclosure of confidential information.
 - Requires the return of company property on termination of employment.
 - Provides that employees have no right of privacy in communications or activities.
 - Is consistently implemented and enforced.



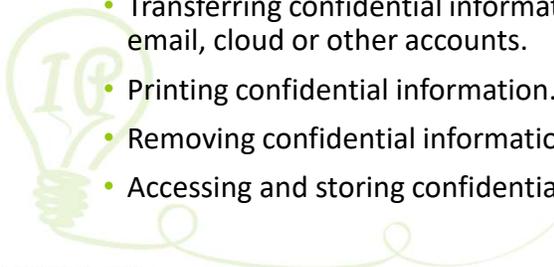
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Efforts to Maintain Secrecy – Confidentiality Policies (Cont.)

- An effective confidentiality policy restricts:
 - Discussion of confidential information with those who do not have a reason to know.
 - Transferring confidential information to removable storage media.
 - Transferring confidential information to personal or unauthorized third-party email, cloud or other accounts.
 - Printing confidential information.
 - Removing confidential information from company facilities.
 - Accessing and storing confidential information outside company premises.



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Efforts to Maintain Secrecy – Confidentiality Policies (Cont.)

- Update confidentiality policies regularly.
- Recirculate confidentiality policies regularly.
- Uniformly enforce confidentiality policies.
- Ensure that employees acknowledge confidentiality policies.
- Maintain confidentiality policy acknowledgments, including in employee personnel files.
- **TRAIN** employees on confidentiality and security policies.

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Effective Remote Work Policies

- Eligibility – Years of service, FT/PT, etc.
- Frequency/Duration – Is remote work full-time, part-time? For what period?
- Procedures – How is remote work requested? Who must approve it?
- Expectations
 - Same duties and assignments.
 - Same availability to colleagues.
 - Same availability for meetings, telephone conferences, etc.
- Full time and attention.
- Security and confidentiality.
 - Requirement of secure confidential information.
 - Continued applicability of confidentiality and data security policies.

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Other Necessary Measures to Protect Trade Secrets

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Efforts to Maintain Secrecy – Physical Security

- Ensure that the workplace is secure through:
 - Locking doors.
 - Limiting visitor access.
 - Requiring visitors to sign in and out.
 - Requiring visitor accompaniment.
 - Maintaining security cameras.
 - Retaining security guards.



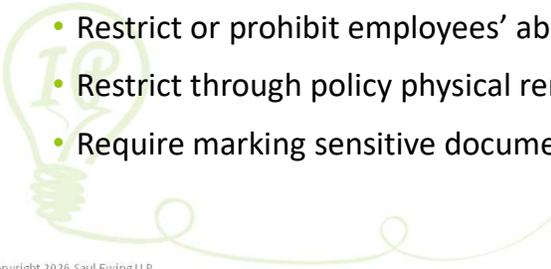
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Efforts to Maintain Secrecy – Other Restrictions and Requirements

- Restrict or prohibit thumb drives or other storage media.
- Restrict or prohibit access personal email accounts (including sending work emails to personal email addresses without company authorization).
- Monitor employees' use of company accounts and servers.
- Restrict or prohibit employees' ability to print confidential information.
- Restrict through policy physical removal of sensitive materials from office.
- Require marking sensitive documents as "Confidential – Internal Use Only".



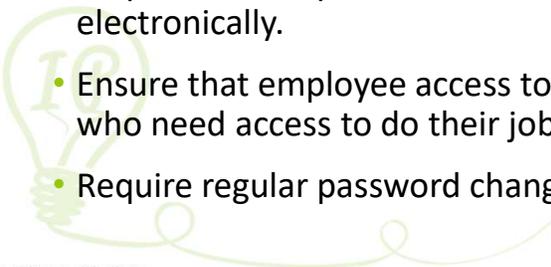
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Efforts to Maintain Secrecy – Other Restrictions and Requirements (Cont.)

- Ensure that printed materials are kept in secure, locked locations.
- Shred printed materials or maintain locked boxes for material to be shredded by a vendor.
- Require two-step authentication for employees to access information electronically.
- Ensure that employee access to company servers is limited to those who need access to do their jobs.
- Require regular password changes.



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Efforts to Maintain Secrecy – Other Restrictions and Requirements (Cont.)

- Roll out privacy and data security policies.
- Train employees in cybersecurity awareness.
- Retain vendors to audit the security of confidential information, and related policies and practices.
- Require employees on termination of employment to sign an acknowledgment indicating:
 - understanding of all of confidentiality obligations; and
 - return of all confidential information.



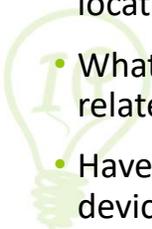
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Efforts to Maintain Secrecy – Out-of-Office Policies & Questions

- Network management questions – do employees operate in a virtual, secure network or through their local drives? Local printing? Copying to desktop?
- What policies exist regarding clean desktops or work in non-secure locations?
- What policies exist regarding use of AI outside of office for work-related items?
- Have employees been trained on taking calls in presence of smart devices? Restrictions on use of free WiFi?



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Efforts to Maintain Secrecy – Third Party Contracting

- Trade secret protection must also extend to third-parties, through contract requirements to protect each other’s confidential and trade secret information.
- Prime example: Responses to RFQs.
 - If pricing is not standard, should include prohibition on disclosure.
 - If bid is to a governmental agency, certain protections exist for marking aspects of the bid as confidential or trade secret.
- Data security agreements with third parties.
- Company-sponsored AI usage.
 - Has Company entered into agreement with AI provider? Has Company restricted AI provider from using company information/data for defining LLM?
- Point is to be showing that protection of trade secret information is a Company priority.



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Key Takeaways



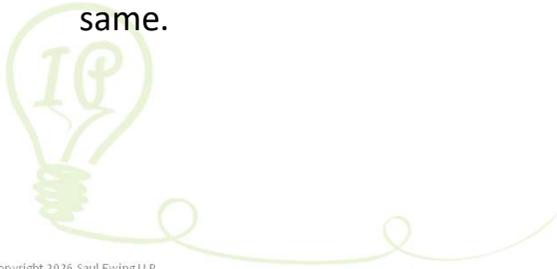
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Defining and Identifying Trade Secrets Key

- Company must be mindful of what its trade secrets are.
- Need to consider at the front-end (i.e., well before use or disclosure or misappropriation is threatened or occurs).
- Federal and state law treats definition of trade secrets basically the same.



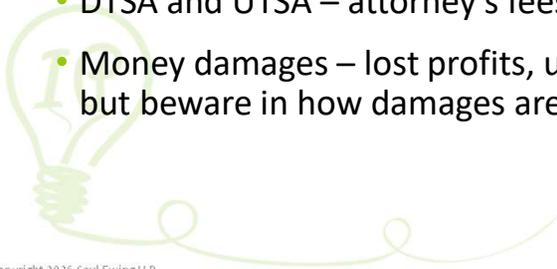
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Damages if Secrets Are Stolen

- Company has variety of remedies available to it.
- Injunctive relief.
- DTSA – ex parte seizure.
- DTSA and UTSA – attorney’s fees and enhanced damages.
- Money damages – lost profits, unjust enrichment, reasonable royalty, but beware in how damages are sought.



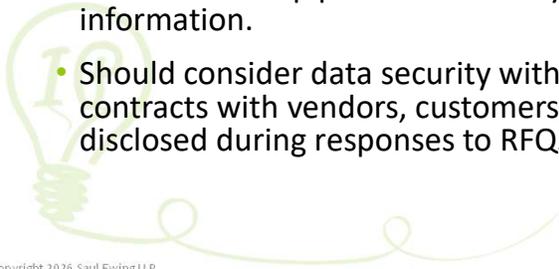
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Protections of Trade Secrets Are Key to Protecting Secrecy

- Must use at least confidentiality agreements to protect disclosure of information.
- Should provide training to ensure employees understand what is confidential/trade secret information.
- Need to develop policies internally and externally to protect secrecy of information.
- Should consider data security with third-parties and confidentiality in contracts with vendors, customers, etc., to protect sensitive information disclosed during responses to RFQs and other external communications.



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