

I'm from the Government, and I'm Here to Help: New Federal Law Increases Protections Available to Your Brewery's Trade Secrets

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Trade secrets have become the lifeblood of just about every industry in the United States – including every sector of the beer industry, both large and small. So what exactly is a trade secret? It is the confidential and commercially valuable information that provides your company with a competitive advantage. Familiar examples of trade secret information include things like the Colonel's secret recipe at KFC, the algorithm underlying Google's search engine, the combination of wood that Budweiser uses in the burning process associated with its flagship lager and, yes, the bill of materials and brewing processes for that new experimental sour wheat beer you've been developing.

The federal government recently acknowledged the paramount importance of trade secrets by enacting the Defend Trade Secrets Act of 2016 (DTSA). The DTSA is a landmark law; one that serves to "make a federal case" out of most trade secret misappropriation claims. This new law recognizes the vital role that trade secrets play in generating billions of dollars in annual revenues and millions of jobs as a key component of our national – and local – economy. It also comes in response to several high profile cases which demonstrate how vulnerable U.S. companies are to both garden-variety internal threats – such as a departing employee who downloads proprietary information (such as recipes and customer lists) to a thumb drive on his way out the door – and more sophisticated external cyber-threats – such as the foreign government sponsored hacking that has been making headlines over the last several years.

Prior to the DTSA, trade secrets did not receive the same protections under federal law as are afforded to other forms of intellectual property such as trademarks, copyrights, and patents. The DTSA provides the first ever federal civil statutory remedies for theft of trade secrets. These remedies exceed those which may have been previously available under state law, including aggressive seizure remedies similar to those used to recover counterfeit goods under trademark law, a doubling of recoverable damages, and attorneys fees.

There is one important caveat for all business owners to note, though: Embedded within the text of DTSA is a warning that if your business fails to include notice of the DTSA's "whistleblower immunity" in your employee agreements or handbooks, you will not be able to take advantage of the law's exemplary damages and attorney fees provisions. Among other things, this notice must advise the employee that he or she cannot be held liable under any trade secret law for the disclosure of a trade secret that is made in confidence to a government official or attorney for the purpose of reporting a suspected violation of law or in a document filed under seal in a lawsuit.

Of course, non-compete and non-disclosure agreements play a key role in protecting a company's trade secrets. However, the law governing the enforceability of these agreements is constantly changing. Failure to revise these agreements periodically could have disastrous consequences. The passage of DTSA provides yet another reason why companies must review and revise their agreements and handbooks to maximize the protections available under the law. A simple and cost effective way to have your agreements reviewed, along with your physical and digital security measures, is through Bond Schoeneck & King's innovative [Trade Secret Protection Audit](#).

If you have any questions about any of the above information, please contact [Chip Grieco](mailto:cgrieco@bsk.com) at cgrieco@bsk.com or [Dennis K. Schaeffer](mailto:dschaeffer@bsk.com) at dschaeffer@bsk.com.



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