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MARKET MATTERS: Protecting trade secrets and other commercial assets

By David A. Slossberg
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There's that old adage that a company's greatest asset is its people. That is, without exception, true. But there are other key assets. Chief among these are customer and market information, business methods and technology. Many of these are proprietary — and critical to a business' ongoing success.

A competitor with access to this information easily could become dominant in the marketplace, altering its own business plan by incorporating the trade secrets it has acquired.

Customer and market data, unique business methods and proprietary technology are the fuel that power a business. Too often these assets are inadequately protected, particularly given the challenges inherent in rapidly developing technology, the internet and social media.

What's the biggest source of "leaked" propriety information? Former employees are the most common source.

To mitigate this specific risk, businesses of all sizes, operating in all sectors, should consider using appropriate non-compete, nondisclosure and confidentiality agreements to protect trade secrets and other company assets. Properly drafted, these agreements will not only broadly define the company's proprietary information, but also provide streamlined remedies if there were to be a breach. In addition, when properly drafted, these agreements can provide recourse — even if a former employee or competitor is located outside of the state of the primary place of business.

While there is no substitute for well-crafted contractual agreements with employees and commercial partners, in the event that such documents don't exist, Connecticut businesses may have hope yet. That hope lies in an oft overlooked and commonly misunderstood law that just may be the greatest friend to Connecticut's business community.

More than 25 years ago, recognizing that there are certain property rights that are inviolate and must be protected, the legislature enacted the Connecticut Uniform Trade Secrets Act. This law includes a fairly broad and nonexclusive definition of trade secrets, helping to protect "information, including a formula, pattern, compilation, program, device, method, technique, process, drawing, cost data or customer list." Available remedies include the ability to obtain injunctive relief against further unauthorized use of the proprietary asset(s), and the opportunity to collect money damages and attorney's fees if the party prevails.

Not everything is protected under CUTSA. Information readily obtainable in the public domain is excluded. So, too, is information properly acquired by reverse engineering or by independent development.

By way of example, a water bottling company discovered the limits of CUTSA when it tried, unsuccessfully, to claim that the shape of its water bottles, which were on full display on store shelves, were somehow trade secrets.

Where a business has no written agreements that protect proprietary assets, it will be necessary to prove it had taken precautions to protect trade secrets. These steps may include, among other things, limiting access to the proprietary material, marking documents confidential, keeping formulas carefully protected on computer networks, only sharing information with other companies under nondisclosure agreements, referencing the proprietary nature of information on promotional materials and website, and showing care in discussing proprietary information when promoting the business.

In today's complex marketplace, identifying a market, perfecting a product and staying ahead of the competition is harder than ever. To level the playing field, businesses must protect the unique, valuable and proprietary assets that enable them to thrive.

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