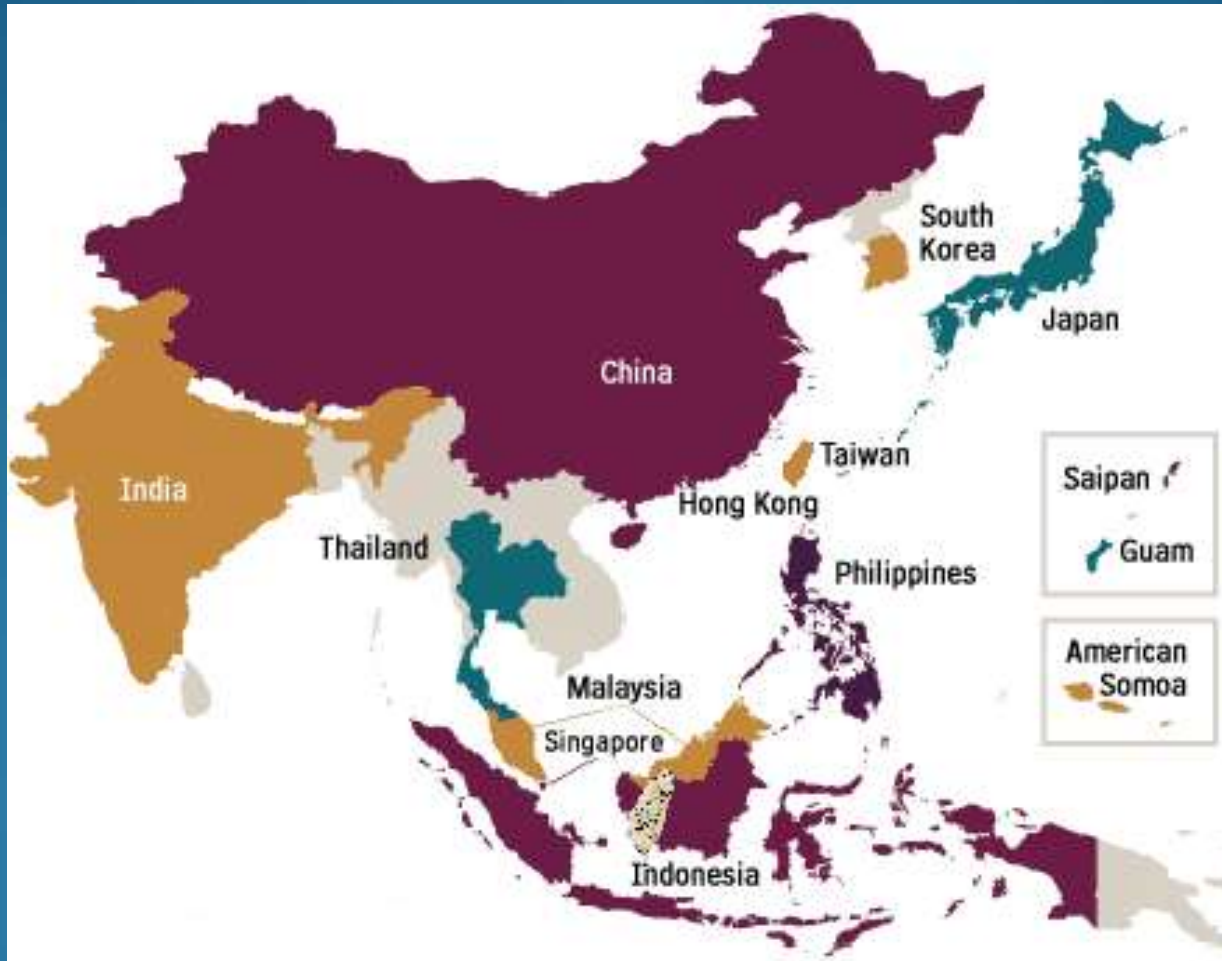


“In Confidence” – Putting In Place A Trade Secret Protection Program



Trade Secrets!!!



What is a Trade Secret?

- **Not generally known**
- **Confers an economic benefit to the owner**
 - **Economic benefit comes from secrecy**
 - **Not from the value of the information**
- **Owners takes reasonable steps to keep secret**
- **Continues as long as secret**

What can be a Trade Secret?

- **Special suppliers**
- **Product specifications**
- **Purchase prices**
- **Test data**
- **Key raw materials**
- **Technical drawings**
- **Laboratory notebooks**
- **Salary structure**

What can be a Trade Secret?

- **Formulas**
- **Compilation of information**
- **Technical information**
- **Manufacturing process**
- **Marketing/Sales strategies**
- **Management processes**
- **Software for business**
- **Financial information**
- **Customer list**

Famous Trade Secrets --
COCA-COLA "Secret Formula?"



Famous Trade Secrets – KFC Recipe?



Famous Trade Secrets – WD-40 Liquid?



*Famous Trade Secrets –
Burger King Special Sauce?*



Famous Trade Secrets – Google Alogorithm?



Trade Secret Law

- **Promotes ethics and fair dealing**
- **Incentive for innovation –**
 - **Safeguards time/investment**
 - **Alternative to patents**
 - **Use when no other IP**
- **Prevent “free ride” by competitors**

Advantages -- Disadvantages

- Advantages --
 - Inexpensive
 - No disclosure
 - Can last forever
 - Effective immediately
- Disadvantages –
 - Can be discovered
 - Protects only improper acquisition
 - Weak form of protection
 - Someone else can patent

Limitations of Trade Secrets

- Independent invention allowed
- Reverse engineering allowed
- Legal receipt of trade secret allowed
- Ex employees take it
- Current employees expose it
- Once discovered – protection lost

Trade Secret Management

- Identify trade secrets
- Create policy – Implement by:
 - Physical controls
 - Administrative controls
 - Technical controls
- Educate employees – Written Agreements
- Avoid hiring where non compete
- Departing employee processes

Trade Secret Management

- Written trade secret agreements
 - Reasonable restrictions
 - Non analysis clause
 - No raiding clause
- Restrict trade secrets
 - Only need to know
 - Labeling
 - CONFIDENTIAL
 - MAKE NO COPIES
 - COVERED BY NON-ANALYSIS AGREEMENT
 - Secure area
 - Access control

Trade Secret Management

- **Telephones – Employees; outside calls**
- **Faxes**
- **Computers: e-mails**
- **Photocopying**
- **Shredding – Waste bins**
- **Internal communications**
- **Loose talk**
- **Protect disclosure by partners**
- **License software**

Trade Secret Misappropriation

- *How it happens* –
 - Unlawful access -- theft, fraud, coercion
 - Knowing acquired illegally
 - Innocently acquiring – learning stolen
 - Breach of contract
- *Theft examples* --
 - Industrial espionage
 - Targeted spying
 - Computer theft
 - Network attacks
 - Bribery of employees
 - Internal theft

Trade Secret Laws

- *Specific Trade Secret Law* –
 - Myanmar will have
 - Thailand has
- *Unfair competition Law*
- *Tort Law – Misappropriation*
 - Judge made common law
- *Contract Law* –
 - Best to get contract
 - Provides great certainty
 - Clauses –
 - Non-disclosure
 - Confidentiality
 - No reverse engineering
- *Criminal Law*
 - Reluctance to pursue criminally

Trade Secret Laws

- *Steps* –
 - Confirm trade secret
 - Owner -- take all steps to maintain secrecy
 - Establish breach
 - Infringement/competitive advantage gained
- *Remedies* –
 - Court order issuing injunction
 - Court order for monetary compensation
 - Precautionary impoundment
 - Seizure order
 - Destruction order
 - Punitive damages
 - Criminal actions

Trade Secret Audit

- Conduct periodically
- Identify and record all trade secrets --
Interview
 - R & D
 - Manufacturing
 - IT
 - Marketing
 - Sales
- Confirm ownership
- Verify trade secrets processes followed
- Make certain third party trade secrets not disclosed
- Refine policies/ processes with HR

COCA-COLA "Secret Formula"



COCA-COLA “Secret Formula”



“BRAETZ” Trade Secret Case



“BRAETZ” Trade Secret Case

"Mattel's specific allegations regarding trade secrets were that several of their employees ... defected to MGA and disclosed Mattel's trade secrets. By contrast, MGA's trade-secret claim rested on allegations that Mattel's employees stole MGA trade secrets by engaging in chicanery (such as masquerading as buyers) at toy fairs," Kozinski wrote. "That both Mattel and MGA claimed they stole each other's trade secrets isn't enough to render MGA's counterclaim compulsory."

Coca-Cola Marketing Secretary Case



Dan Greif -- Siam Premier International

Trade Secrets Revealed

- *Comments*
- *Questions*

Thank you