



**TRADE SECRETS AND BRAND EQUITY  
PROTECTION UNDER THE NIGERIAN LAW**

## INTRODUCTION

Brand equity is a marketing term that describes a brand's value. That value is determined by consumer perception of and experiences with the brand.

It is the differential effect of brand knowledge on consumers' response to the marketing of that brand. Brand equity expresses the power of the brand and this lies in what the consumers have learnt, felt, seen and heard or experienced about the brand over time.



## HOW BRAND EQUITY DEVELOPS

Brand equity develops and grows as a result of a customer's experiences with the brand. The process typically involves a customer or consumer's natural relationship with the brand that unfolds following a predictable model:



### **Awareness:**

The brand is introduced to its target audience—often with advertising—in a way that gets it noticed.



### **Recognition:**

Customers become familiar with the brand and recognize it in a store or elsewhere.



### **Trial:**

Now that they recognize the brand and know what it is or stands for, they try it.



### **Preference:**

When the consumer has a good experience with the brand, it becomes the preferred choice.



### **Loyalty:**

After a series of good brand experiences, users not only recommend it to others, it becomes the only one they will buy and use in that category. They think so highly of it that any product associated with the brand benefits from its positive glow.



## ELEMENTS OF A BRAND



**Brand Consistency**



**Brand Vision**



**Brand Emotions**



**Brand Perception**



# PROTECTION OF BRAND EQUITY IN NIGERIA

## Trademark



## Copyright



## Patent



## Industrial Designs



## TRADE SECRETS.

In order to maintain their brand equity, market relevance and profitable business operations, businesses and corporations usually have certain confidential business information which gives them that competitive edge and is unknown to others



According to the World Intellectual Property Organization (WIPO), Trade secrets are intellectual property (IP) rights on confidential information which may be sold or licensed.

According to Bryan A. Garner, 'Black's Law Dictionary' (Thomson Reuters, 9th ed., 2009), p.1633. Trade Secret, is essentially a formula, process, device, or other business information kept confidential to maintain an advantage over competitors; information – including a formula, pattern, compilation, program device, method, technique, or process, that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The unauthorized acquisition, use or disclosure of such secret information in a manner contrary to honest commercial practices by others is regarded as an unfair practice and a violation of the trade secret protection.



## WHAT QUALIFIES AS A TRADE SECRET?

In general, to qualify as a trade secret, the information must be:

- commercially valuable because it is secret,
- be known only to a limited group of persons, and
- be subject to reasonable steps taken by the rightful holder of the information to keep it secret, including the use of confidentiality agreements for business partners and employees. **National Mutual v. Mortensen, 606 F.3d 22 (2d Cir. 2010) decided on 11.05.2010.**

This last condition was held by the United States Court of Appeals, to be a germane condition. There, it was decided that the fact that the Agency Office Automation (AOA) information existed in a different, better-protected format than the physical folders did not elevate it to Trade Secret status. Rather, it is the protection afforded the information that matters and not the medium of storage.



## WHAT TYPE OF INFORMATION QUALIFIES AS TRADE SECRET?

In general, any confidential business information which provides an enterprise a competitive edge and is unknown to others may be protected as a trade secret.

Trade secrets encompass both technical information, such as

Information concerning manufacturing processes

Pharmaceutical test data

Designs and drawings of computer programs

Commercial information, such as distribution methods, list of suppliers and clients, and advertising strategies

formulas and recipes and

source codes

financial information

A trade secret may be also made up of a combination of elements, each of which by itself is in the public domain, but where the combination, which is kept secret, provides a competitive advantage.

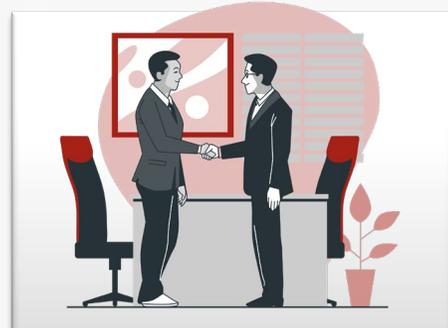


# PROTECTION OF TRADE SECRETS IN NIGERIA

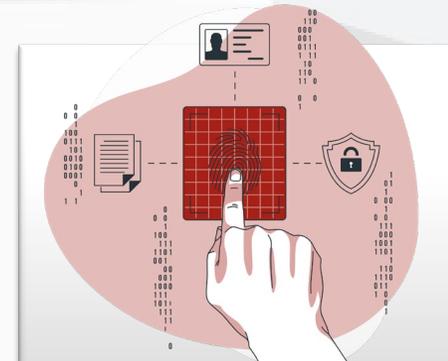
Trade Secrets can be protected in Nigeria through the following means to wit:



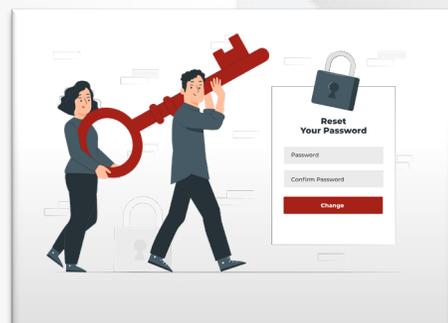
**Confidentiality/Non-Disclosure Agreements**



**Non-Compete Agreements**



**Robust IT security infrastructure**



**Controlling the accessibility of important documents**



## ARE TRADE SECRETS REGISTRABLE?

Unlike other IP rights, trade secrets are not registrable because it must be kept secret. Once it fails to fulfill the requirement of secrecy, it no longer qualifies as a trade secret.

## CAN TRADE SECRETS BE SOLD OR LICENSED?

Trade secrets are property rights and can be assigned or licensed to other persons. The holder of trade secret has the right to authorize a third party to access and use the trade secret information.

However, due to the secret nature of trade secret information, it is not always easy for others to determine whether the information concerned meets the conditions for trade secret protection. Therefore, compared with a patent, it is more difficult to transfer and license confidential information and to resolve disputes which may arise. Since a potential licensee needs to access the trade secret information in order to assess its value or utility, a non-disclosure or confidentiality agreement needs to be signed between the potential licensor and licensee. Further, in order to maintain the secrecy of trade secret information, a trade secret licensor should require a licensee to take reasonable steps to keep that information secret.



## NOTABLE LEGISLATIONS

Revised Guidelines for Registration and Monitoring of Technology Transfer Agreements in Nigeria (Guidelines) made pursuant to the National Office for Technology Acquisition and Promotion Act Cap. N62, LFN 2004. (NOTAPA)

Paragraph 4 Immigration Regulations 2017 and the Handbook on Expatriate Quota Administration (Revised 2020) made pursuant to the Immigration Act

section 36(1) and (3) 1999 Constitution of the Federal Republic of Nigeria (as amended) (1999 Constitution)

section 15 of the Nigerian Freedom of Information Act (2011)



## REMEDIES AVAILABLE TO A HOLDER OF A TRADE SECRET

Injunction



Damages for breach of contract



## CONCLUSION

It goes without saying that there is an urgent need for the a subject-specific legislation to regulate trade secrets in Nigeria to cater for its growing start-ups, encourage innovations, and develop the economic sector. Therefore, stakeholders, both governmental and non-governmental need to come together to ensure there is a robust enactment with adequate remedies available to holders of trade secrets in the event of any infraction.



## RECOMMENDATIONS

Enactment of subject-specific legislation

The need to exempt Trade Secrets litigations from the provisions of Section 36(1) and (3) 1999 Constitution of the Federal Republic of Nigeria (as amended) (1999 Constitution).

Use of ADR in resolving Trade Secret disputes

Need for more stringent penalties for unlawful use of Trade Secrets to include remedies in criminal law.

Need for specific provisions of law imposing the duty of confidentiality and punishment for disclosure on Government authorities or their employees who have access to trade secrets of companies in the course of carrying out their duties.

Exemption of disclosure of trade secrets from the requirements to be submitted to a regulatory body for the purposes of obtaining any form of licenses, permit, and/or approval.



## QUESTIONS AND ANSWERS

