

# Trade Secret In-House Assessment



ZARLEY LAW

1

## Let's start with the easy one, does your company have trade secrets?

### ☐ Of course.

Great, many companies overlook their trade secrets until it is too late. Keep going to make sure you have identified all of your company's trade secrets and proper steps are being taken to maintain their secrecy.

### ☐ Maybe, I think?

Fair enough. Knowing what intellectual property your company owns, let alone what should be its trade secrets, it not always an easy feat. Answer the rest of these questions to help identify what your trade secrets are and whether your company is taking the right steps to secure them.

### ☐ Nah.

This is a common belief. However, a trade secret can be found in all sorts of places that you wouldn't think of. Move likely than not, your company has valuable trade secrets.



**Did you know that pretty much anything can be a trade secret as long as it has value from not being known and steps are taken to protect it?**

☐ **Sure did.**

Even with knowing what a trade secret is, it can be difficult for a company to readily identify all the possible sources for trade secrets. They can take the form of customer lists, distributors, manufacturers, recipes, price sheets, etc. Working with a good law firm is the first step is locating your company's trade secrets.

☐ **No, do I look like a legal dictionary?**

Trade secrets can easily hide in plain sight. Reviewing your company's operations and assets with an IP law firm should be a priority.



**The key to a good trade secret is keeping it secret. Does your company have internal policies in place to maintain the confidentiality of your trade secrets?**

☐ **Definitely.**

Having a sound and consistently implemented trade secret policy is the best defense for most trade secrets. Keeping your company's policy up to date is essential to maintaining its effectiveness.

☐ **Sort of.**

Something is better than nothing. Inconsistencies in your company's confidentiality policy can negate any efforts that have been expended to maintain security. Using an up to date and uniformly applied policy is important to maintaining your company's trade secrets.

☐ **We live on the edge, so no.**

Living dangerously is one way of going about things. Having a dependable trade secret policy can help ensure that your company is safe from misappropriation. That will allow you more time for other forms of thrill seeking.



**CONFIDENTIAL**



## Are your company's policies in writing?

### ☐ All of them.

Your company's policies can be a key factor in maintaining secrecy. Speaking of maintenance, keeping your policies up to date can be equally as important.

### ☐ Some of them.

That's a start. Working with a legal professional can make sure that your company's policies are not only fully memorialized, but cover all aspects necessary to protect your company's trade secrets.

### ☐ Nope.

Not having policies in writing can lead to them being viewed as not being in place at all. Working with a legal professional can make sure that they are not only memorialized, but are also complete.



## Are your employee's trained on your policies?

### ☐ Like well-oiled secrecy machines.

Well done, having any gaps in your company's trade secrets maintenance can negate all other efforts. Working with a legal professional to adopt or revise a uniform policy that is applied top-down is the best way to keep your company's secrets safe.

### ☐ Mainly just upper management.

You would be surprised the access any employee, upper and lower tier, can have to your company's trade secrets. Having proper training for all employees is essential to maintaining trade secrets.

### ☐ There is no specific training.

Having policies in place and in writing is excellent. But having untrained employees can make any efforts to maintain your company's trade secrets worthless.





**Does your company use nondisclosure agreements (NDAs) with its employees, vendors, and affiliates?**

☐ **We don't do business without them.**

Having a nondisclosure agreement is one thing. Having one that your company understands is an entirely other thing. It is best to consistently have NDAs in place that your company provides. If an NDA is provided by the other side, a legal professional should review it before it is signed.

☐ **I think we have some of those.**

Having a nondisclosure agreements in place should become second nature to make sure your company's trade secrets are safe. Working with legal counsel, your company can obtain an NDA that is not only effective but is readily understood by everyone involved.

☐ **No, we don't want to be "that kind" of business.**

Having NDAs in place with employees, distributors, and manufacturers can appear off-putting. It is, however, key to making sure that your company is protected. It is an all too common scenario where a business partner becomes a competitor.



## Does your company have an employee manual?

☐ **Yes and we read it every night.**

Like any good book, your company's employee manual may be in need of a new edition. Working with an attorney can make sure that it's a best-seller.

☐ **I think there is a Word document like that somewhere.**

An employee manual that is not provided to all employees significantly limits its effectiveness when it is needed most. Having the right legal counsel can help draft, adopt, and implement employee guidelines.

☐ **Not yet.**

Don't worry, every company has to start somewhere. The best place to start is having sound legal counsel at your company's side when preparing and adopting employee guidelines.



## What would your company do if your company lost some or all of its trade secrets?

### ☐ Spring into action.

Acting quickly can help prevent damage caused by misappropriation and stop your company from losing rights in its other trade secrets. Ensuring that there is a plan of action in place is the key to effectively enforcing your company's trade secret rights.

### ☐ Some competition might not hurt so probably nothing.

You may be losing much more than you think. Sometimes losing a few of your trade secrets can prevent you from enforcing the others. Also, it can be hard to know how much was taken until it is too late. The last thing a business wants is the new store across the street knowing your secret sauce and your customers who like to buy it. By moving swiftly the amount of harm can be limited. Having a plan in place makes this even better.

### ☐ These things happen, right? No big deal.

Losing control of your company's trade secrets can lead to losing a foothold in your market that took years to establish. Imagine all of your company's hard work leading to your competitor having your price and customer list. Having a strategy in place can reduce the harm caused by misappropriation.

# LOST DOG



## REWARD

If found please call  
01-08-19-88

**Has your company ever purchased another company and its assets?**

☐ **We have.**

Whether it is common place or a one-off event. It is important to understand exactly what you are buying.

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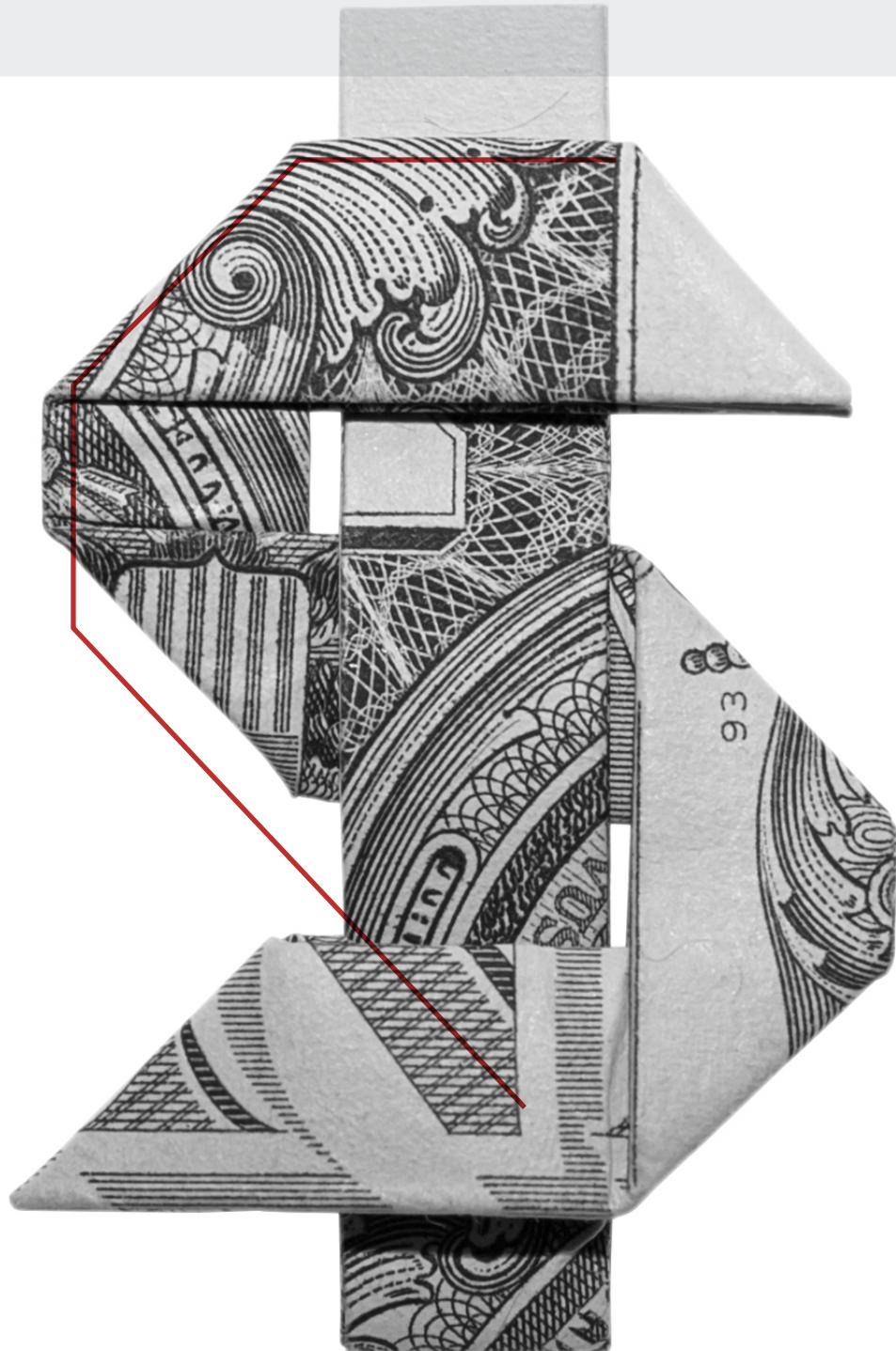
☐ **We might.**

It is never too early to start looking ahead. One way to do that is to have great security over your trade secrets so you know what to expect from others.

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☐ **Not in the foreseeable future.**

Even if purchasing another company is not on the horizon, it is important to know that if and when the time comes, consulting with an attorney is key. This applies if your company is buying or being bought.





## Did your company do its due diligence to understand the purchased companies trade secrets?

### ☐ We had a legal team assist us

This is the best approach. Make sure that you are working with a team that is thorough and can provide you with a detailed, yet understandable, assessment of your purchase. Sometimes this means working with a separate law firm to evaluate just the intellectual property assets.

### ☐ Not really

Having legal counsel can make or break a deal. Using an IP attorney can also prevent a bad deal from happening.

### ☐ We handled that on our own

Working with legal counsel to ensure that your company is aware of exactly what it is buying is important. Although it may cost a bit more, the results could be invaluable.



# SCORE YOUR RESULTS!

## **If you answered yes to most of the questions, great!**

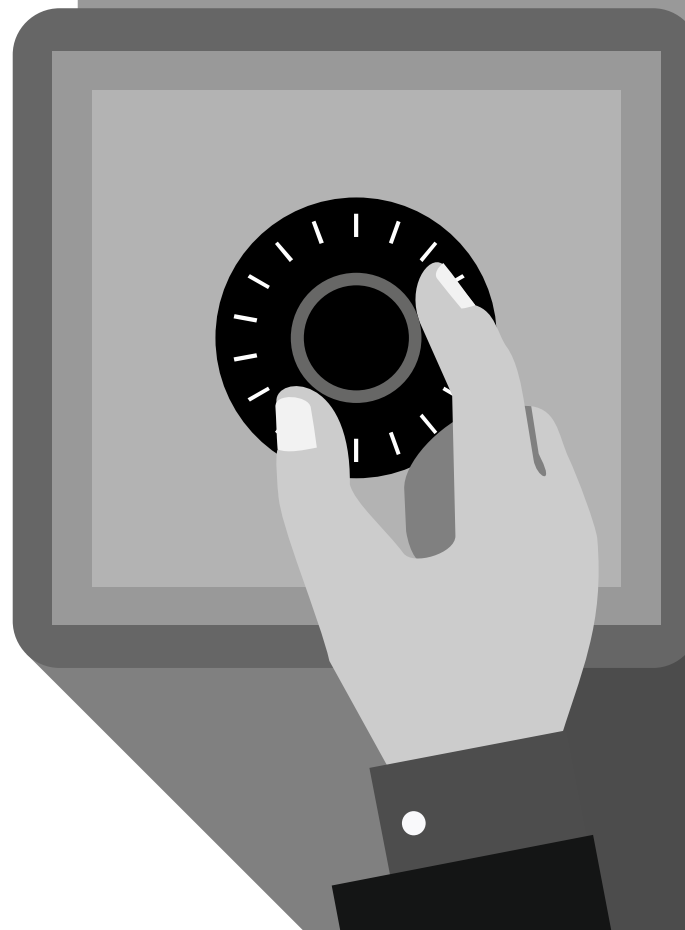
Your company's trade secrets look to be in good shape. If you have never had your policies reviewed by a legal professional or at least not recently, it is a good idea to reach out to one as soon as you can. A solid review of your policies can help identify missing trade secrets, increase security of your secrets, and ensure there is a plan to enforce your company's rights, if needed.

## **If you answered with some yes and no, and a few maybes, you are getting there.**

Your company is on its way to securing its trade secrets. A review of your company's agreements and policies is needed though. Remember, once the cat is out of the bag, it is impossible to get it back in.

## **If you answered no or maybe more often than not, you have some work to do.**

Your company needs an overhaul of its trade secret approach. It can be hard to focus on trade secrets because it can be challenging to tell what needs to be worried about. Consulting with a legal expert is your first step in identifying, securing, and enforcing what could be your company's most valuable asset.



**WE PROTECT YOUR IDEAS**

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