

# DON'T LET AN EMPLOYEE STEAL YOUR BUSINESS!

**P**reventing employee fraud and the misappropriation of revenues and assets in the workplace is a hot topic today. However, less is written about the importance of preventing the theft of trade secrets by current and former employees.

Theft of proprietary information is not commonly discussed in terms of classic employee dishonesty. It seems to occupy a special place in the lexicon of literature and in the statutes that govern its remediation.

In the arena of forensic accounting, we are seeing increasing occurrences involving the theft of trade secrets. Thus, educating businesses about the potential risks, and putting preventive systems in place to mitigate risks, is taking on greater urgency.

When trade secrets are misappropriated, discovery of the misappropriation may not be uncovered until after an investigation of the reasons for lost market share. Once the theft is uncovered, what specific remedies exist? Two explicit remedial paths are available. One remedy is under the Uniform Trade Secrets Act which exists in a majority of the states. It allows victims to seek injunctive relief, as well as provides economic damages and the payment of their attorney's fees by the thieves. The other remedy is the Economic Espionage Act of 1996 (EEA) which provides for incarceration and monetary fines and damages.

The EEA contains two provisions. One addresses economic espionage directed by

foreign governments or government-controlled entities. The other prohibits the commercial theft of trade secrets carried out for economic or commercial advantage, whether the perpetrator is foreign or domestic. This article addresses domestic theft.

Under 18 U.S.C. §1832, Theft of Trade Secrets for Economic or Commercial Advantage, the government must prove its case beyond a reasonable doubt. It is also illegal to attempt to steal a trade secret, or to receive, purchase, destroy, or possess a trade secret which the defendant knew was stolen.

Calculating the damages from the theft of trade secrets is complex. The value of the trade secret may be determined by its price, or by the cost of a legitimate licensing agreement. Value is more difficult to determine when the information relates to a small part of a larger process, or the product to which the trade secret relates has not made it to the marketplace. The cost of the research and development for the information, and the "thieves market" theory are methods of determining the value.

When litigation is the only remedy, a forensic accountant plays a critical role in calculating the true economic damages of the theft trade secrets, as well as providing insight on how future thefts can be prevented through the implementation of trade secret controls.

When comparing the costs and benefits of litigation to recover damages with investing in a study of existing trade secret controls, the study of and structure for protecting trade secrets provides a return in excess of the investment. <sup>1</sup>



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