Cumhuriyet Üniversitesi Fen Fakültesi
Fen Bilimleri Dergisi (CFD), Cilt:36, No: 3 Özel Sayı (2015)
ISSN: 1300-1949

Cumhuriyet University Faculty of Science
Science Journal (CSJ), Vol. 36, No: 3 Special Issue (2015)
ISSN: 1300-1949

Civil responsibility of arising from the contravention of trade secrets in Non-contractual relationships

Rahim GHAED HOSEİNİ

Master of Private Law, Tehran University, International Campus Kish Island, Iran

Received: 01.02.2015; Accepted: 05.05.2015

Abstract. Certainly, the system of intellectual property is one of the New Economic Policies and an infrastructure issue to provide sustainable development of countries at the international level. In this regard trade secrets are crucial which are depended on not only competition law but also industrial property. Since trade secrets are vital information that a businessman or businesswoman might overcome other competitors. However essence of trade secrets causes its inefficient legal protection. We discuss in this paper responsibility of arising of violation of trade secrets in non-contractual relationships.

Keywords: : Intellectual property, trade secrets, responsibility, non-contractual relationships

1. INTODUCTION

The ownership is a feeling and a right that human can use things within the rules in various societies, naturally. it is something that has economic value can be converted to cash In terms. Moreover it is classified physical and intellectual property.

The subject of intellectual property rights is not material; it is about human mind activities. It is referred to exclusive and absolute right of utilization of Intellectual creations. It is divided to Literary and artistic property rights and industrial and commercial property rights. Trade secrets or not disclosed Information are vital examples of industrial property rights which are mentioned in international documents such as TRIPS. The economic value of trade secret causes its creation and protection. Trade secrets rights are collision point of moral teaching via legal rules, because the secrecy is a Moral individuality while it is allowed sometimes in some conditions.

2. TRADE SECRET

In legal term, responsibility is accountability for actions which is assigned to a person. In addition is categorized to civil and criminal responsibility.Civil responsibility has two componenets of contractyal responsibility and non-contractural. Contractural responsibility obligation to compensate for losses incurred as a result of non-performance of the contract .In this article will be discussed responsibility of arising from disclosing secrets among the commercial rights holder and violator that there is any contracts.

All of information which has potential and actual economic value and will be accessed illegally is called trade secrets. It is called information unclosed too, moreover it is unknown for people generally and that is vital for supporting the development of new ideas. Definition of trade secrets consists of information, independent economic value, Anonymity, unavailability. In addition trade secrets owner should perform reasonable activities for maintaining privacy and secrecy of data and information. Any information that has economic value or potential value because they are competitive is unknown. And easily accessible except through illegal and legal

*Correspondingauthor. Rahim GHAED HOSEİNİ

Special Issue: The Second National Conference on Applied Research in Science and Technology

http://dergi.cumhuriyet.edu.tr/cumuscij

owner is not taking proper measures to protect the confidentiality of trade secrets. Trade secret is information which information is not discloused and it is used to support new ideas which have fundamental importance as well as it is not known for publicity. A trade secret is any formula, pattern; device used to collect information on the business that you are almost independent economic value and to gain an advantage among those who are not aware of it or it is not exploited.

3. INFORMATION UNDISCLOSED

Trade secrets' examples are enormous, then it is so difficult to count them. However they could be mentioned as scientific and technical, commercial, financial, systematic, computerized information.

Despite of other kinds of intellectual ownership, trade secrets have not specific time duration. For example copyright law has 17-37 years for supporting in a lot of countries and trade secrets are sustained until they have relevant competencies and condition. Laws and juridical procedures emphasize on protection of crucial data always, although somebody believe it will lead to censorship and will ban free information flow. Consequently it will cause prevention of the principle of free competition. Rules and precedents, always insist on protecting valuable data are, however, some believe that the protection of trade secrets should be limited; because, it is a huge obstacle to reach free information flow. In addition, unacceptable threats imposed on the possible displacement of employees and unfavorable effect on improving innovation and finally distrupt free principle flow. These comments in no way, is not acceptable and justified based on the analysis of trade secret protection, basic strategies of moral rules known and encourage innovation, and prevent unfair competition and "Business Ethics" commercial transaction that the right people on their territory.

4. TECHNIQUES OF PROTECTION OF TRADE SECRETS

Although owner of trade secrets has important role for protecting them, but the following techniques are mentioned:

5. PHYSICAL AND REASONABLE SECURITY

To archive properly and information unaccessibility could help company trade secrets protection. For example Coca-Cola formulas are maintained in Atlanta Bank which is accessible by just two people at the same time.Therefore, formula of the drink have not disclosed after so many years. Hopefully this kind of support is very strong, exceptional and rarely need to find. Although, reasonable efforts to maintain the confidentiality of trade secrets of the type carried out and it is need to keep this secret arming of the company.

6. NON-DISCLOSURE CONTRACT

By the non-disclosure agreement, parties agree to keep secret information and refrain from disclosing them. Hence, if a person breach the contract, other side could complain him/her to the court and request him/her damages. A lot of kinds of trade secrets could be protected by Non-disclosure contract, specialy in web and computer companies. These contracts could be

established verbal or written. Moreover written contracts are used more, because proof of disclouser verbal secrets is so difficult. The best way to maintain the secrets is non-disclosure them. Under the agreement, the parties undertake not to disclose secret information to maintain and disclose them. Therefore, If Individual contract own to violate the party Violation Contract and the disclosure most of secrets on beware as well damages incoming on own To of the court Demand Slow.

However, in the case of employees who are required to maintain the confidentiality of any company's trade their employer, the conclusion of such an agreement is not always necessary. Different types of trade secrets Batvsl to conclude this agreement can be supported by the contract. Use non-disclosure agreement, at the corporate level, especially Internet companies and the computer used. Therefore, the only people, who have a secret relationship, are legally required to keep the information secret. In terms of the contract in accordance with the principle of freedom of contract is recognized that the nature and the conclusion of contracts and how they are governed.concluded that, as proof of an oral agreement, especially in the case of the need to prove the confidentiality of information, problem

Violation of trade secrets in relationships outside the contract:

Non-contractual responsibility or outside of contract will be existed when two person have not any agreement and one of them will damage other person. The assumption that the person does not have a contract with each other and one of them intentionally harms or offense to other, non-contractual liability or out of the contract is fulfilled. It is said that the responsibility for enforcement, liability arising from breach of duty is primarily prescribed by law. Such a breach of duty to the people as a whole, and that the proceedings to claim damages calendar has not been compensated. The first non-contractual liability and describe the elements of a violation of trade secrets and non-contractual relationships under scrutiny placed

7. NON-CONTRACTUAL RESPONSIBILITY AND ITS FOUNDATIONS

Nowadays, civil responsibility term is used absoloutly, and its special meaning is used in non-cotractual issues. This responsibility is performed in various countries by different titles. For example in common law systems Tort low or tottious liability are used and in Islamic jurispendese is applied. Today, if the term is applied to civil liability or otherwise absolute sense if we specifically mention it; we must search for its non-contractua.

8. DESTRUCTIVE ACTION

Damaging agent that is responsible for the compensation to other harmful acts attributed to him. If the agent is responsible for his own actions and harmful act is an act done without legal person. Article 1 of the law of civil liability is to be included is the person responsible for damage. Whoever intentionally or as a result of recklessness without legal authorization to life or health or property or freedom or dignity or business reputation or to any other rights established by law can damage materially and mortally.

9. CAUSE DAMAGE:

In civil law, there is no material loss or damage as a main pillar of the famous civil liability not included; however: In cases such as the 221 and the 226 and 223 words is used damage and the definition of the term as no mention of damage and silence of the law in this regard because it is evident. Furthermore, in Articles 1 and 2 of the law of civil liability to the disadvantage mentioned. Loss should be ascertained from It can be seen that the loss of his compensation claim agent must be proven. Because according to the principle of risk can not be based on who is responsible for knowing and therefore compensable loss of one of these the loss is ascertained. What is worthy of reflection is essential that yet, and later of the tragedy that happened. In this connection, some believe that the need to offset future losses on contracts is the responsibility of the coercive. Some also come with a separation between losses and probable losses, loss of the first kind, and they are compensated for losses that are probable future losses are realized or not, are not compensable.

Causality relation between the harmful act and the cause damage:

To fulfill the responsibility to verify the existence of causality between harmless and harmful act is caused by the loss of the verb and the result is a loss of the verb. The incident led to the incident should be considered essential conditions for the realization of the loss is not proven that no loss.

There is also mentioned in Article 331 of the indirect relationship is emphasized. The latter part of Article 1 shows the law of civil liability of the person responsible for the loss due to the practice. The first part of Article 2 of the Act that the injury suffered if the action causes damage to the material or spiritual responsibility and suggest the need for causality relation between the injury suffered and the loss.

10.FAULT

Fault civil liability is one of the fundamental principles and rights at least as one of the major responsibilities of the counts. According to this article if the person intentionally or imprudence resulting in damage to another will be responsible for compensation and without committing responsibility for one's fault. The fault detection must conduct a reasonable and prudent person would consider reasonable and comply with the norms of human behavior is a prerequisite caution.

Violation of trade secrets and non-contractual relations:

If the contractual relationship between the owner of the trade secret and the other side is either terminated or any confidential information of the contract between him and the recipient does not exist, how can support trade secret?

11.TERMINATION OF EMPLOYMENT RELATIONSHIP

After the employment relationship ends, the likelihood of becoming aware of the employee's trade secrets, trademarks or join a rival competitor. In most cases, misuse or unauthorized disclosure of secrets by former employees takes place. The measures taken by the holder of the secrets of the former employee's responsibility

12.TERMINATION EMPLOYEE'S RELATIONSHIP

Anticipated measures, trade secret holder in the direction of proving its claims, while the case against a former employee and his new employer implies. Therefore, the most important measures in this regard is terminating interview, notice the new employer, and contact with customers and contracting parties to stick to them.

Exit interviews: Exit interviews that took place during the employment relationship and the general duty of the employer to the employee and the obligation of secrecy he pointed out that he also restrictive agreements on the protection of trade secrets is assumed and during the interview, the employee will be asked to submit information mysteriously nature, and if a copy of the information or documents on your computer and your items are returned. Moreover, if possible, he asked for a new job. This interview helps the employer to the employee an accurate assessment on the extent of his knowledge of trade secrets about his commitment to the privacy of his job are new position.

Warn the new employer: if the employee's former employer discovers that she is going to join the competition

13.FORMER EMPLOYEE RESPONSIBILITIES

Privacy usually arises when the temporal relationship between the parties is not present or is terminated accepted. The trust relationship provides the support that is wider than the mere obligation of confidentiality. As it passed the resolution is which imposes a heavy commitment to the relationship between different aspects of trade secret protection, effective manner. A former employee of the same way and with the end of the employment relationship, commitment to employee loyalty is not relevant. Almost no general rule, but there are restrictive agreements, which prohibit employees from competing with his former employer, who can benefit from our expertise and knowledge in his new position. Nevertheless, the relationship between employer and employee have the condition in which the former employer, trade secrets has in his possession. Even after the termination of his contract of employment is also committed to the privacy and will not use them. In fact, the nature of information in such a way that the person aware of it, under any circumstances, be committed to secrecy, which is an agreement. Employee in any way the right of possession and use of trade secrets is not, therefore, in spite of their skill and knowledge; however, through trade secrets can not entrust their memory, claiming that such information except that he has personal knowledge of the continuance of the work obtained the right to use them. For example, customer or employee can list the main parties to the contract until after the separation of the employer's mind to communicate; because, the difference between the normal copy or to remember there is no information.

14.INEVITABLE DISCLOSURE

Units usually costs a lot of research and training of human resources in order to achieve valuable information as well as consumed large amounts of their trade secrets that will inevitably be placed at the disposal of employees. May persist after training or the separation of the company and are willing to join the competition. If there is a non-competition agreement, will be in accordance with the provisions of the Treaty, but in the absence of such an agreement, in principle employee can be entered in competitive activities. The employee may have a new

position, a position that its disclosure or use of trade secrets is unavoidable. It is known that the inevitable disclosure. Skeptics have commented on the issue of freedom of movement of employees and argue that economic growth is largely dependent on competition. One of the important factors that provide competitive field, displacement specialist employees. Moreover, applying the theory of economic growth opportunities for new companies looking to do more business opportunities, using the expertise and innovation.

15.THIRD PARTY LIABILITY

The third person in ways other than direct contact with the owner of a trade secret and regardless of whether or not aware of the confidentiality of information. For example, the new employer that the employee's former owner of a trade secret, the information to be aware of, or the exchange of personal information to persons other than the owner of the trade secret has been studied, are a third party. The person who has nothing to do with the holder of the secret illegally attained and those who happened to have received information from a third party are considered. Party may resort to illegal means, such as theft or economic espionage, secrets and is appropriate in this case is criminal liability. For example, if a computer program without stipulating the confidentiality of the information it is happened to see in your email; while, Recognizes the value of information, will be committed to secrecy. The third obligation of secrecy, in such a situation is rules of fairness. Furthermore, commitment to impartial, third party, or in circumstances that he knew that they had received a trade secret and subject to non-disclosure and confidentiality returns. Iran's rights can not be vague notion of fairness to the task and the obligation and responsibility to speak to the third violation of a person's behavior in such a situation common. Noting that in some cases, third parties can be prohibited from using or disclosing the information is not public yet. Send to e-mail you information widely among different parties, releases, and public awareness about the secrets he has not proven very difficult. The assumed lack of knowledge of the trade secret; if the third party is made aware of the mistake of trade secrets. As an example, he was sent to the wrong fax number, or recklessness of others to acquire information.For example, one of the servants of the owner of a trade secret, in speaking of her indiscretion, he revealed the secret without reference to its secrecy, while the third is not aware of data latency however, not make a commitment to uncover the secrets of his Barnmvd and if, such person shall not be found liable. But if party in any way, such notice will inform the holder of the secrets of the confidentiality of information, other information or expose them to make. Another issue that should be mentioned in this connection, that the third condition.

Considers trade secret information, but imagine achieved through the legal right to use them. A clear example of it, which thinks Amtyazgyrndhay not disclose information security, its true owner and the coagulation License agreement with him, studying the data. Question whether it is possible to prevent the use of such personal? Certainly, her commitment to the remains, but courts generally acts with the intent that such person. And in most cases, major investments secrets, legitimate to assume that they have permission to use court orders, due to the ban on the use of trade secrets, because major damage to a third party would be inconsistent with the goodwill they had to buy Ari continued exploitation of secrets considered permissible. At this time, the owner of the trade secret rights, pay the buyer the faith. The intention of the owner is essential. In the framework of law, it is clear that the judge would not have, because such purchases, however, is considered a usurper

16.TRADE SECRET LITIGATION

Holder before pleading to the type of information that is at risk of abuse or evaluation. If the trade secret holder of the commercial life of Scientific and Technical Information that is related to litigation.The most effective and the most serious possible and likely will be necessary to resort to the rules of criminal protection. Similarly Status,, when confidential information will be placed in the holder's main competitors; he will be deeply unsatisfactory business performance. Usually prove undue appropriation of trade secrets specific complications associated with and in addition to being costly, the result is somewhat in contrast to other cases, hence, trade secret owners are less likely to be filed, unless the damage.

Damage is enormous. Proving undue appropriation of trade secrets, less by direct evidence, it is possible and often demanding. Evidence to convince the court to verify the claim and, eventually, the judge is to assess. The arguments of the parties and witnesses, in particular, in this regard, decide. In lawsuits filed by the employer.

Against its former employee, the employer will send a clear message to those who sought to recruit specialists who sent him in the pursuit of their rights in violation of the fiduciary obligations and restrictive agreements, is determined. On the other hand, the employer appealed to the public's image will be negatively affected. It may be unpleasant impression to create a staff that includes trade secrets, intend to exploit and then drop them without the personal expertise in competition law, it is not value. Good public relations can partially offset the impression. Holder should be clearly stated that the pleading to support trade secrets nor taken any other purpose, such as to deprive employees of the neck or competitive advantage.

Another important issue rose during court proceedings, to maintain the confidentiality of trade secrets; while addressing the controversy, because litigation is likely aware of competitors, consumers and the general public of confidential information Increases, and hence, prior estimates necessary measures to keep information secret, during the hearing. The demand for health care issue, a means of maintaining the confidentiality of trade secrets, secrets that the holder of the submission of evidence and documents relating to these data, because it will preserve.

There is a possibility that the other party other individuals who are somehow involved in the investigation.The holder can obtain information about trade secrets. Privacy protection is not enough, especially when in the court documents, references to information is confidential, in which case, the holder is required to demand that if the court documents sealed and access to documents only possible with the permission of the court will be affirmed.

17.BREACH OF CONTRACT

One of the ways to protect trade secrets is using a more accurate interpretation of provisions of contracts or restrictive. Hence, if the contract is violated by ignoring the terms of the rights holder, the action due to violations. The first requirement of proof on open contracts thus proving the existence and validity of contracts restrictive, rent, license, share, and so on. Although the basic principle, the validity of the contract and the beneficiary of the contract but sometimes it does not need to prove the validity of this principle is reversed. The next requirement is to prove a breach of contractual obligations.

The condition is caused by damage to only want to show that the contract has not been meta ttained. For example, if a non-compete contract, employee commitment, but it does not become competitors for a certain time.

This is the only other significant Myknd.nkth proof enough that if you want to be able to join the competition in dispute. Based on civil liability, the court is convinced that the misappropriation of trade secrets, can not lead to claims based on violations.

The proposed contract, so that civil liability litigation, except in special cases, it is a tacit acknowledgment of the lack of leadership, Ibrahim, the restrictive agreements on the protection of trade secrets law study in America, England, the contractual relationship. The rights of the holder of a trade secret if he wants to cause litigious proceedings should valid contract and breach of contractual obligations resulting damage is not proven.

18.CONCLUSION

Support law of intellectual ownership is one of the most important of today's community. Scope and amount of support from wide application of investors, technology developers and the employees, consumers, following generation may provide benefits like innovation and achieve today's generation. Principle of protecting trade secret; despite all the arguments and the measures taken to limit the main survive. Definetely, world trade cannot be successful without protecting of secrets. Our current needs in the context of commercial transactions and consequently in terms of trade secret law, competition law, which limits the speed of the prediction rules explain these contracts. It is obvious that just look at the subject of the contract; due to the complexity of the issue of commercial competition can not be achieved. Keeping pace with changes in the nature of trade and business secrets to enable more efficient and lighter.Although the owner of the secrets of the trade secret protection plays a major role.because the owner of the trade secret has exploited his thought, and support the operation of the secret bonus.

REFERENCES

[1] Abbasi, Solmaz., Mehdi Pour Ghazvini, Parasto, Trade secrets and how to support them/Available at: www.ceit.aut.ac.ir
[2] Alsan, Mostafa, Trade secret rights in the age of information technolog, Justice Legal publication. Vol.11
[3] Amini Far, Rahmat allah, Civil liability, Legal Collection, Vol. 4(16)
[4] Badini, Hassan, (1945), Philosophy of civil liability, Sahami Publication, Vol. 1
[5] Eghbali Derakhshan, Mohammad Hanifeh, (1940), intellectual ownership and its position in law, Kanoon magazine
[6] Elias, Stephan, "Trade Secrets Law, An Overview", 1998: aa: www.Marketing tnday.rnm legal /trade secrets /html
[7] Emami, Hassan,(1040), civil law, Tehran University magazine, Tehran, Vol. 1
[8] Ghasemzadeh, Morteza, (1342), principle of civial liability, Mizan Publication, Vol 4
[9] Katozian, Naser, (1945), Civil Rights, Requiring out-of-contract, Enforcement liability, Tehran Universit publication, Vol. 1
[10] Najafi, Tavana, Amin, Ali, (1928), Criminal law protection of trade secrets in Iran and America federal law, law Islamic publication, Vol.3(2)
[11] Rahbari, Ebrahim, Trade secret rights, Samt Publication, Vol 1

[12] Rahbari, Ebrahim, (1944), The role of restrictive agreements on the protection of trade secrets law study in America, England, France, Law research magazine
[13] Rezaei Far, Mehdi, Legal protection of trade secrets electronic/ www.rezaeefar.ir
[14] Sadeghi, (1342), Comparative study to determine the competent authority to deal with lawsuits violation of trade secrets in the digital space, Quarterly Journal of Commerce, Vol. 11
[15] Shahidi, Mehdi, (1943), Works contracts and commitments, scientific and cultural splendor Press Association, Tehran,Vol 1
[16] Shahidi, Mehdi, (1943), Criminal law protection of trade secrets in Iran and America federal law, Publications Scientific and Cultural Council again, Tehran, Vol. 1