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Several Provisions on Prohibiting Infringements upon Trade Secrets (98 Revision)[Effective]
国家工商行政管理局关于禁止侵犯商业秘密行为的若干规定(98 修订) [现行有效]

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Several Provisions on Prohibiting Infringements upon Trade Secrets

(Promulgated by Order No. 41 of the State Administration for Industry and Commerce on November 23, 1995 and amended by Order No. 86 of the State Administration for Industry and Commerce on December 3, 1998)

Article 1 For the purposes of curbing infringements upon trade secrets, protecting the legitimate rights and interests of the owners of trade secrets and maintaining the order of the socialist market economy, these Provisions are formulated in accordance with the relevant provisions of [the Unfair Competition Law of the People's Republic of China](#) (hereinafter referred to as [the Unfair Competition Law](#)).

Article 2 The term "trade secret" as mentioned in these Provisions refers to the practical information about technologies and business operations, which is unknown to the public and is able to bring economic benefits to the owner and for which the owner has taken confidentiality measures.

The phrase "unknown to the public" as mentioned in these Provisions refers to fact that the information is not directly available through public channels.

The phrase "practical information that can bring economic benefits to the owner" as mentioned in these Provisions refers to the information with definite practicability which can bring actual and potential economic benefits or competitive advantages to the owner.

The "confidentiality measures taken by the owner" as mentioned in these Provisions include signing a confidentiality agreement, setting up a confidentiality system and adopting other reasonable confidentiality measures.

The "information about technologies and business operations" as mentioned in these Provisions includes designs, procedures, formula of products, manufacturing techniques and methods, management secrets, name list of customers, information about resources, production and sales strategies, bottom price of a bid, contents of a bidding document, etc.

The term "owner" as mentioned in these Provisions refers to citizens, corporate bodies or other organizations who own trade secrets.

Article 3 It is forbidden to commit any of the following acts infringing upon trade secrets:

1. Acquiring trade secrets by stealing, luring by promise of gain, coercing or other improper means;
2. Disclosing, using or allowing others to use trade secrets acquired by means as mentioned in the previous sentence;
3. For an entity or individual who has business relationship with the owner of trade secrets, its or his breaching the contract or violating the owners' requirements about disclosing, using or allowing others to use the said trade secrets that

should provide evidence to prove the existence of the trade secret and its infringement when it (he) applies to the industry and commerce administrative organ for investigating and punishing the infringement.

The entity or individual under investigation (respondent), interested persons and testifiers shall faithfully provide relevant evidence to the industry and commerce administrative organ.

If the owner can prove that the information used by the respondents is identical with or similar to its (his) trade secret and that the respondent had access to its (his) trade secret, while the respondent is unable to provide or refuses to provide evidence to prove its (his) lawful acquisition or use of the information, the industry and commerce administrative organ shall determine the infringement of the respondent on the basis of the relevant evidence.

Article 6 Where a respondent illegally discloses, uses or allows any other person to use a trade secret, and if such act results in irrecoverable losses to the owner, at the owner's request and upon its (his) written promise that it (he) will voluntarily bear the liability for the consequences of taking mandatory measures, the industry and commerce administrative organ may order the respondent to stop selling the products produced with the said owner's trade secrets.

Article 7 Where anyone violates Article 3 of these Provisions, the industry and commerce administrative organ may, under [Article 25 of the Unfair Competition Law](#), order it (him) to stop the violation and fine it (him) not less than 10, 000 yuan but not more than 200, 000 yuan.

When the industry and commerce administrative organ punishes the infringer in accordance with the provisions of the preceding paragraph, it may dispose of the infringing articles as follows:

1. Ordering the infringer to return to the owner the drawings, software and other relevant data containing the trade secret;
2. Supervising the infringer's destroying the products produced with the owners' trade secret which will make the secrets known to the public once they are traded in markets, unless the owner agrees to take such measures as purchasing or selling those products.

Article 8 If the infringer refuses to execute the punishment decision and continues its (his) act as mentioned in Article 3 of these Provisions, it shall be deemed to have committed a new violation and shall be given a heavier punishment.

Article 9 If the owner files a request for mediation of a damage claim with the industry and commerce administrative organ, the industry and commerce administrative organ may conduct a mediation.

The owner may directly bring an action in the people's court so as to make a claim for damages.

Article 10 No state organ or none of its functionaries shall disclose or allow any other person to use any other person's trade secrets when it (he) performs its (his) official duties.

The case handlers of an industry and commerce administrative organ shall keep the owner's trade secrets confidential when supervising and inspecting unfair competition acts infringing upon trade secrets.

Article 11 The power to interpret these Provisions shall remain with the SAIC.

Article 12 These Provisions shall come into force as of the date of promulgation.