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## INSIDE

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### New finds this week

Trade secrets are more than just information - they embody businesses' hard work, commitment, and expertise. Any unauthorized acquisition or disclosure of trade secrets breaches ethical standards and legal regulations, resulting in substantial financial losses for businesses and adversely affecting the business environment.

### Contact

**Uyen NGO** (Ms.)  
Legal Assistant

**Mr. Nguyen Hoa Binh** Co-  
Founding Partner



# New finds this week

By Uyen Ngo, Nguyen Hoa Binh, et al.

## COMPREHENSIVE GUIDE TO TRADE SECRET PROTECTION AND INFRINGEMENT IN VIETNAM

### Overview

Trade secrets are a type of intellectual property safeguarded by intellectual property laws. They include valuable information related to investment, financial, or intellectual activities that have yet to be made public. Trade secrets are protected based on their legitimate acquisition and the maintenance of confidentiality without the requirement for formal registration. In Vietnam, establishing trade secret rights aligns with international legal standards.

### Specific Acts Of Trade Secret Infringement

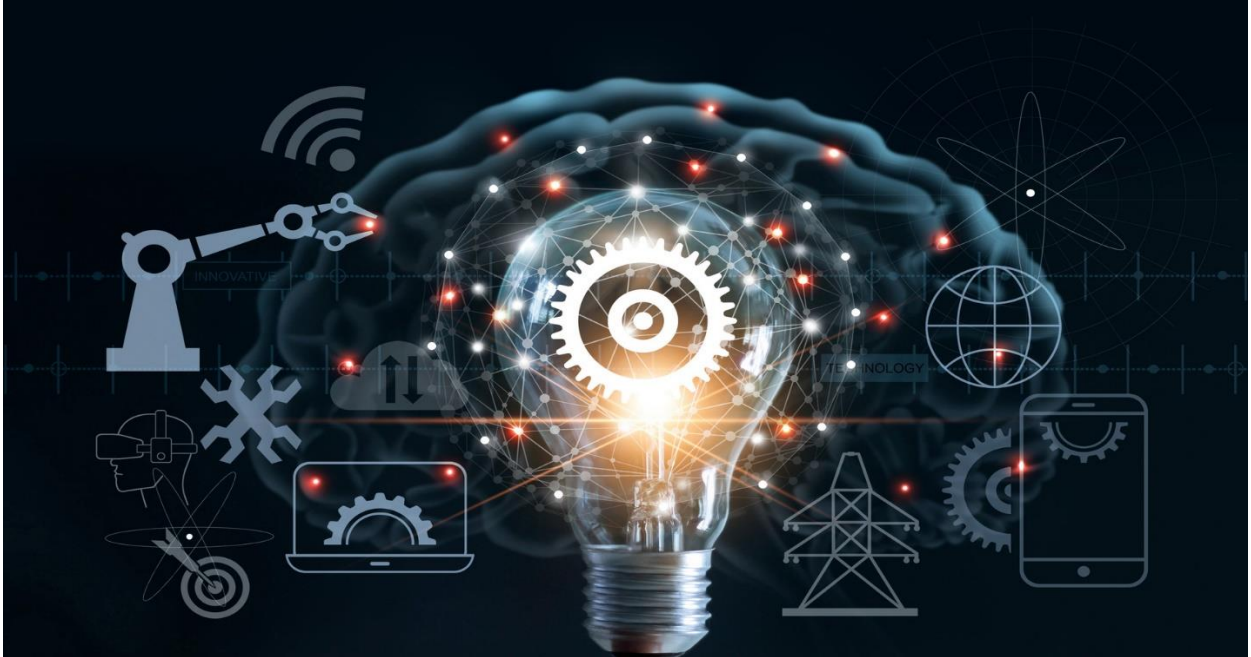
Trade secret infringement in Vietnam is divided into two categories: "unfair competition in the field of industrial property" as outlined in Decree 99/2013/ND-CP, amended by Decree 46/2024/ND-CP, and "unfair competition in commerce" as stipulated in Decree 75/2019/ND-CP. Consequently, the same act of trade secret infringement can be addressed under either of these two mechanisms of Vietnamese law. The selection of the appropriate enforcement mechanism is typically based on various factors, including the purpose of the infringement (e.g., gaining a competitive advantage, causing harm to the business, or non-competitive motives) and the nature and severity of the infringement (e.g., the extent of damage caused and impact on the market).

Regarding Intellectual Property, The IP Law outlines six acts considered trade secret infringements under Article 127.1. These acts include accessing or collecting trade secret information by circumventing security measures, disclosing or using trade secret information without permission, breaching confidentiality agreements, accessing trade secret information during the application process for a business or product circulation license, using or disclosing trade secrets acquired through infringement, and failing to maintain the confidentiality of test data as required.

About unfair competition in trade, Article 45.1(a) of the 2018 Competition Law outlines two specific acts that are considered to be infringements of trade secrets:

1. Accessing or collecting trade secret information by bypassing or overcoming the security measures implemented by the owner of the information.
2. Disclosing or using trade secret information without the consent of the information owner.





### Fines And Legal Consequences

It is important to note that organizations and individuals who violate trade secrets can face administrative and/or civil penalties. Specifically, from an intellectual property perspective, acts of trade secret infringement, as defined in Article 127.1 of the Intellectual Property Law, are subject to administrative sanctions outlined in Decree 99/2013/NĐ-CP, as amended by Decree 46/2024/NĐ-CP. The fine for individuals who infringe upon trade secret rights as prescribed in Article 127 of the Intellectual Property Law ranges from VND 50,000,000 to VND 100,000,000. Additionally, from the perspective of unfair competition in trade, the fine for individuals ranges from VND 100,000,000 to VND 150,000,000.

In terms of civil sanctions, civil rights can arise from various grounds, including contracts, the results of creative activities that create intellectual property objects, or damages caused by illegal acts. Upon discovering an act of trade secret infringement, the owner has the right to sue and request the court to adjudicate the act in accordance with civil procedure.

In Vietnam, there is a high risk of trade secret infringement by employees and workers of companies or business organizations due to the nature of their work, which allows them access to the company's confidential information, data, and procedures. Consequently, Vietnamese law includes specific regulations to govern employees' obligations and legal responsibilities in cases of trade secret infringement. For instance, Article 125 of the Labor Code 2019 outlines that employees who disclose trade secrets and technological secrets, infringe upon the employer's intellectual property rights, or cause severe damage or threaten to cause severe damage to the employer's property and interests may face disciplinary action, including dismissal.

Suppose an employee violates the trade secret protection agreement. In that case, they may be held accountable for compensation as outlined in the agreement between the parties or by civil law and other relevant laws, as stated in Article 4.3 of Circular 10/2020/TT-BLĐTBXH. This circular addresses the handling of compensation for damages resulting from breaches of agreements related to the protection of trade secrets and technological secrets.

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## The Protection Of Trade Secrets

To enhance security and protect confidential information, businesses should prioritize addressing vulnerabilities in trade secret protection. This is crucial for minimizing the risk of exposure or theft of valuable trade secrets. Implementing a comprehensive security strategy is essential to maximize the protection of these sensitive assets.

Implementing a Non-Disclosure Agreement (NDA) is essential for safeguarding a company's trade secrets. These legally binding contracts establish clear confidentiality obligations between parties sharing sensitive information. NDAs outline the confidential information, the methods for protecting it, and the consequences for breaching the agreement. This includes potential compensation for damages and the possibility of contract termination. By clearly delineating the value of confidential information and the associated obligations and legal consequences, NDAs work to discourage trade secret infringements and effectively protect a business's interests.

Businesses need to understand that while implementing a non-disclosure agreement (NDA) is crucial for protecting sensitive information, it's not the only measure that should be taken. In addition to an NDA, businesses should adopt other trade secret protection measures. An NDA is only effective if the parties involved uphold their confidentiality obligations. If confidential information is disclosed for different reasons, such as computer hacking, the NDA alone may not provide sufficient protection for the company:

- Establishing a solid security system is crucial for businesses. This involves restricting access to trade secrets to only essential employees, implementing technical control measures such as passwords, data encryption, firewalls, and monitoring access to trade secrets. It's also important to regularly update software and security systems to ensure ongoing protection of sensitive information.
- To safeguard trade secrets, educating employees about the risks of infringing upon company secrets is crucial. This can be achieved by conducting training sessions to highlight the significance of trade secrets, clearly outlining actions that constitute infringement, and specifying disciplinary actions. Encouraging employees to report any instances of trade secret violations also plays a crucial role in reinforcing internal responsibility. By doing so, employees better understand their role in protecting trade secrets and help minimize the likelihood of breaches. Businesses need to allocate sufficient resources to train employees in trade secret protection.
- To ensure security, businesses should manage and restrict the transfer of documents and storage devices containing trade secrets outside the company, regulate the copying, printing, and storage of trade secrets, securely delete trade secrets when they are no longer required, and safeguard the physical security of locations where trade secrets are stored.
- One effective strategy for addressing infringement is to take legal action. This involves documenting and preserving evidence of the infringement and filing lawsuits or requesting enforcement action from relevant authorities. This approach can serve as a deterrent, prevent future violations, establish legal precedents, help businesses safeguard their rights, and seek justice.



### **Conclusion**

In conclusion, trade secrets are more than just information - they embody businesses' hard work, commitment, and expertise. Any unauthorized acquisition or disclosure of trade secrets breaches ethical standards and legal regulations, resulting in substantial financial losses for businesses and adversely affecting the business environment.

While implementing a thorough security strategy can mitigate risks, it cannot eliminate the possibility of trade secret loss. Nevertheless, it's crucial to recognize that prevention is the best approach to safeguarding trade secrets.

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# DAITIN & ASSOCIATES

Lawyers and Consultants

## Contact

*Please contact Daitin & Associates if you require any further information or guidance in the procedures of acquiring, protecting intellectual property rights in Vietnam | Cambodia | Laos | Myanmar | Thailand | Philippines | Brunei | Indonesia.*

[info@daitin.com.vn](mailto:info@daitin.com.vn) | [www.daitin.com.vn](http://www.daitin.com.vn)