

Protecting Your Business Secrets

By Ian M. Falcone, Esq.

You've worked hard to build your business; to develop your sales and marketing techniques, to build strong customer relations, to earn a competitive advantage. But, every day you risk losing that advantage. You hire employees, you train them, you disclose your secrets to them and then, one day, they leave. Most will leave on good terms. But, some will try to take unfair advantage of what you have taught them.

There are ways to protect yourself and minimize your risk. Two basic concepts, non-disclosure and non-competition can help you protect your competitive advantage.

Non-disclosure can prevent a former employee from telling a competitor what he has learned from you. Non-competition can prevent someone from starting or working for a similar business and using your secrets against you. In certain situations, the obligations are presumed. In most, however, a written agreement is required.

In Georgia, certain types of information known as trade secrets are protected without the need for a written agreement. Generally speaking, any information which is not commonly known to the general public, which can not be easily obtained and which provides an economic advantage can be protected. This can include special designs or manufacturing processes, financial data, sales techniques and even customer lists. However, information which fits the broad definition does not automatically receive protection. Reasonable steps must be taken to keep the information secret.

Good examples of trade secrets are the formula for Coca-Cola syrup and the eleven secret herbs and spices of Kentucky Fried Chicken. Your trade secret information may be far less marketable than these examples, but they are valuable to your company and are entitled to protection.

Unfortunately, it is often difficult and expensive to protect your business= trade secrets. Moreover, the court may determine that your information is not a trade secret and will not grant protection. If you have confidential information which you want to protect, a written agreement is always best.

A non-disclosure agreement can protect information whether or not the law would grant trade secret status. The length of protection can be substantial, however, it is best to reserve permanent non-disclosure terms for true trade secrets. Also, if your company routinely discloses its information, it is unlikely that a non-disclosure agreement would be enforceable.

Non-competition agreements provide an entirely different type of protection for your business. These written documents prevent a former employee from going into business or working for a competitor and then using the experience he has gained under your guidance against you.

In order to be enforceable, Georgia law requires that the agreement be reasonable in three respects: 1) scope, 2) location and 3) duration. Scope refers to the industry or type of work that is prohibited. Location refers to the geographic area that is prohibited. Finally, duration or length of agreement is crucial.

Generally, agreements that last more than 2 years are questionable. However, the facts of each situation will determine the reasonableness of the restrictions. In one situation a sort term agreement may be too restrictive. In another, a long term agreement may be enforceable.

It is important to understand that Georgia law states that either the agreement as a whole is enforceable or it is not. If it is unreasonable in any respect, the entire agreement is unenforceable. What is reasonable is different in every situation. Severe restrictions may be reasonable for a vice president, while the same restrictions may be unreasonable for a receptionist. The best rule of thumb is use these agreements sparingly and seek only reasonable protection. An attempt to over-protect your business may result in no protection at all.

Finally, a well drafted agreement and some internal procedures can provide your business with substantial protection. However, employees are supposed to gain knowledge, contacts and experience over time. The law will not enforce an agreement which unreasonably restrains someone from earning a living. If you have information which you want to protect, it is best to contact a local attorney.

For more information on filing small business or personal bankruptcy, or bankruptcy options, in the state of Georgia please call Ian Falcone at The Falcone Law Firm in Marietta, Georgia at (770) 426-9359 or visit <http://www.falconefirm.com>