

Auto-Related Businesses Can Protect Trade Secrets

By Carey DeWitt
Special Writer

(Carey DeWitt serves on the Board of Directors of the Detroit-based law firm, Butzel Long. DeWitt has been litigating trade secret cases and advising clients on the proper protection of trade secrets for more than 25 years. He is a graduate of the University of Michigan Law School.)

Given the increasingly transitory nature of the employment relationship and the digitally portable quality of business information, today's business executive must be at least generally aware of both employees' and employers' obligations under trade secret law.

Auto-related businesses are especially vulnerable to trade secret theft, with significant technical data, many competitors, and a mobile workforce. Essentially, such businesses must be aware of the means to prevent trade secret misappropriation and the actions necessary to remedy a developing threat to this key business asset.

Central to this knowledge is the fact that trade secret law protects an auto-related business (and any business) from potential theft of a wide variety of confidential information. It also may protect a business from the raiding of its customers by means of such information theft.

What are Trade Secrets? Many people think only of the "Coca-Cola Formula," when they hear of trade secrets.

In fact, though, protectable "trade secrets" encompass far more than formulas and can include technical specifications (before patent or those deemed not appropriate for patent), identities of, and information about, suppliers, vendors, and employees, customer lists, customer preferences, customer sales/payment/profitability history, prospective customers, prices and pricing policies, costs, margins, internal weaknesses, business, marketing, strategic and sales plans, business processes, planned products and services, mergers and acquisition targets, and as well as other information.

If an employee were to depart to a competitor such as a competing auto-related company or supplier and use or plan to use his or her former employer's confidential information (even if he or she allegedly only "memorized" this information, a very common claim), the Uniform Trade Secret Act would authorize a lawsuit for an immediate injunction against use, disclosure, or even "threatened use" of such information (and in some cases even against employment with the competitor or solicitation of the businesses' customers).

The Act also allows recovery of money damages and in certain cases allows recovery of attorneys' fees from the offender(s), including the offender's new employer if such employer is involved in the theft.

Keys to Maintaining Secrecy: Naturally, the trade secrets must be provably "secret" (such that reproducing this information would take great effort or trial and error), but if the information is truly valuable, the secrecy required for a trade secret claim may be demonstrated by some or all of the following recognized steps:

1. Storage of information with locked or limited access.
2. Need-to-know information access.
3. Electronic key access to rooms/information.
4. Clear marking of confidential information.
5. Limited access of computer-stored information.
6. Plant and other Premises Visitor restrictions.
7. Employee policies on confidential information.
8. Routine verification of confidentiality procedures.
9. Routine employee reminders of confidentiality policy.
10. Pursuit of departing employees with access to confidential information; retrieval of such data.
11. Prohibiting removal of confidential information from company premises.
12. Restricting copying of confidential information (numbering copies, etc.).
13. Conducting exit interviews.

Of course, consideration of the above 13 precautions is

recommended regardless of whether a trade secret suit is contemplated – simply as a means of protecting the business from harm.

An audit of the above and other trade secret protections employed by the business should be conducted on an annual basis to ensure the health and longevity of these key assets.

Non-Competes: Separate from the filing of a trade secret claim, a useful means of protecting the business from customer raiding or trade secret violations is a non-competition or non-solicitation or non-disclosure agreement.

These agreements may help to satisfy the Trade Secret Act, but are not necessary to bring a trade secret claim. Nonetheless, for employees in possession of information that is especially sensitive, non-compete or at least non-solicitation and non-disclosure agreements are an especially appropriate means of protection.

To be enforced in court (and such a claim should be brought quickly so that an immediate emergency injunction may be obtained), in most states a non-competition agreement (barring employment at a competitor) simply must be reasonable as to geographic scope, duration, and the line of work it prohibits (e.g., the former employer's business) and must have the purpose of protecting a reasonable competitive interest (such as trade secrets or good will).

Even if a non-compete agreement is not adopted, a non-solicitation agreement in which the former employer's customers and employees may not be solicited for a time (such as a year), or at least a confidentiality agree-



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ment (identifying and protecting business secrets), is an appropriate means of protecting trade secrets and the goodwill of customer relationships. These agreements also may be enforced by suit for injunctive and other relief.

Again, relief should be sought immediately.

The bottom line is that sensitive business information may qualify as a trade secret if it has been treated as a trade secret.

The day-to-day business keys to protecting this asset are security measures that every business should employ to prevent disclosure.

Conclusion/Business Takeaways: Annually conduct a "trade secret audit" to assess the care with which confidential information is treated by the company.

Immediately adopt employee agreements sufficient to make protection of the business easier in the case of a key departure or other threat. Act swiftly in the case of a threatened disclosure to address the violation in court – or risk disclosure of a key business asset.

Fitch Sees Detroit 3 Doing Well in a Down Economy

CHICAGO – Fitch Ratings expects the financial profiles of U.S. automakers and parts suppliers to remain resilient in a downside scenario characterized by sluggish global economic growth and weaker-than-expected North American light vehicle demand.

Fitch says, "Unlike 2008-2009, when U.S. original equipment manufacturers (OEMs) and their primary suppliers were forced to undertake dramatic restructurings in the face of plummeting demand, we believe the Detroit Three (Ford, General Motors and Chrysler) and the largest U.S. parts makers are well-positioned from both a cost and liquidity standpoint to withstand significant demand pressure this year. While we continue to see U.S. light vehicle sales growing modestly to approximately 13.2 million units in 2012, credit profiles are likely to remain relatively stable if a slowdown in unit sales and softer pricing undercuts margins this year."

Fitch points out, relative to the last downturn, operating profiles are more resilient as a result of capacity reduction, lower fixed costs, and a more manageable labor cost structure linked to the recently ratified United Auto Workers (UAW) contracts.

Fitch adds, "We estimate that the break-even industry sales level for the Detroit Three and major parts suppliers is now about 10.5 million light vehicles, corresponding to 2009 recessionary sales volumes."

"OEMs and suppliers have also taken steps to bolster their balance sheets since 2009, with generally solid liquidity positions and ample

credit facility availability across the industry. Importantly, management teams have also repeatedly emphasized their commitment to achieving investment-grade status over the medium to long term, with a focus on free cash flow generation, strong liquidity, and consistent debt reduction."

Although U.S. light vehicle sales are likely to grow this year, the forecasted size of the market, at 13.2 million units, will remain well below the industry annual sales level of approximately 17 million units seen from 1999 through 2006.

Fitch says, "We believe the U.S. industry may struggle to exceed annual sales of approximately 15 million light vehicles at the peak of the current demand cycle."

With auto sales in Western Europe likely to fall this year and sales growth rates declining in key emerging markets such as China, India and Brazil, U.S. automakers' operating results in 2012 will depend more directly on volume growth and pricing traction in the U.S. market.

Although a global downturn would clearly impede the progress of U.S. automakers in their efforts to strengthen their balance sheets, Fitch says, most Fitch-rated issuers have sufficient cushioning in their credit metrics to withstand a significant demand shock without driving negative changes in outlooks or ratings.

Fitch adds, "This fundamental improvement in the U.S. auto industry's resilience forms the primary foundation of our positive outlook for the industry in 2012."

Business Tax Reduction Among New Michigan Laws

By TIM MARTIN
Associated Press

LANSING, Mich. (AP) – Starting with the new year, it will be easier for Michigan residents to raise money and show support for the Boy Scouts of America.

A broader range of fireworks will be legally available in plenty of time for the Fourth of July. Licenses allowing children under 10 to hunt turkey, deer and other wildlife with an adult mentor should be available in March. And many school districts will start to change when they hold their school board elections.

Those changes are among the scores that will be ushered in starting Sunday through laws passed by the Michigan legislature.

The Republican-led legislature and Gov. Rick Snyder's administration combined to approve 323 new laws in 2011, well above average for the first year of a two-year legislative cycle in Michigan. Most of the new laws have already taken effect, but some were delayed until Jan. 1 or later.

The most significant changes Jan. 1 deal with the

state's business and income tax structure.

Overall business taxes will be lowered; some forms of retirement income will be taxed. Other big changes include a reduction in state unemployment benefits – from the current 26 weeks to 20 weeks – for new filers starting in mid-January.

But not all of the bills passed in 2011 had to do with tax rates, public employees or worker benefit changes designed to save money for employers.

A new fundraising license plate for the Boy Scouts will be available starting Jan. 3. The Boy Scouts plate joins a lineup of two dozen fundraising plates, including 15 for the state's public universities.

The fundraising license plates typically cost an additional \$35 when first bought. Annual renewal fees for fundraising plates cost motorists an extra \$10.

The Boy Scouts could use the money for programs, but the vehicle license plates also will act as a statewide advertising tool, statewidely say.

"If you have thousands of those mini-billboards around, that will raise the awareness

of scouting," said Steve Bakker, a Boy Scouts volunteer from Alma who helped start the work on establishing a fundraising plate in 2007.

Another new state law will allow more powerful fireworks such as firecrackers and some consumer-grade devices that shoot into the air, such as bottle rockets and Roman candles, in Michigan.

The state's previous list of legal fireworks for residents without special permits was generally limited to ground-based or novelty items such as sparklers, smoke devices, toy snakes and toy noisemakers.

The law that technically took effect Sunday is designed to keep business in the state that now goes to retailers in Indiana, Ohio or Wisconsin. Businesses will have to pay for the right to sell the fireworks, but that process should be worked out in plenty of time for the Fourth of July.

Laws related to youth hunting also change in 2012. A new law eliminates the minimum hunting age and allows kids under 10 to hunt turkey, deer

and other wildlife with an adult who's at least 21 years old.

State wildlife officials could approve regulations for the program early this year, allowing licenses to be sold as early as March.

Michigan's school board elections will be held in November of even-numbered years through a new law that takes effect Sunday. Supporters of the requirement say it will ensure that school board elections are held when voter turnout is highest, during general elections.

Also Sunday, a state ban on a late-term abortion procedure opponents call "partial birth" abortion begins. The procedure already is prohibited under federal law. Supporters of a Michigan ban say it would make it easier to prosecute cases in the state.

Other significant laws will formally take effect later in the year. A bill that will allow more public charter schools in Michigan takes effect in about three months, allowing time for some new schools to open with the 2012-13 academic year.

HFHS President Speaks at LTU

SOUTHFIELD – Henry Ford Health System President Nancy Schlichting will lead a discussion about health-care reform on Tuesday, Jan. 17, from 8-10 a.m. at Lawrence Technological University, 21000 West Ten Mile Road.

Registration begins at 8 a.m. in the lobby of Lawrence Tech's Science Building. The cost is \$25. Those interested can go to www.ltu.edu/management/executive/executive.asp for online registration. Walk-ins are welcome.

For more information, contact Lawrence Tech's Center for Nonprofit Management at 248-204-3095 or nonprofitcenter@ltu.edu, or the Blender Consulting Group at 248-245-7900 or dblender@comcast.net.

Schlichting's presentation is part of the four-part Executive to Executive speaker series for leaders in the nonprofit sector, which is offered through a partnership with the United Way of Southeastern Michigan and others.

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