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Business Information Accessible To All Employees May Lose Trade Secret Status

Under New York law, trade secret protection is afforded to certain confidential business information which gives the owner an opportunity to obtain an advantage over its competitors. To be eligible for such protection, the trade secret must of course first be “secret.” In this regard, previous case law has focused on the owner’s efforts to prevent disclosure of the information to competitors and the public at large. However, the New York Supreme Court, Nassau County, recently indicated that information generally accessible by the owner’s own employees may lose its protected status.

In *ENV Services, Inc., v. Philip Alesia, et al.*, 2005 NY Slip Op 51947 (Nov. 28, 2005), the court granted summary judgment to the five individual defendants, all former employees of ENV, who were accused of disclosing ENV’s customer list to their new employer. The court held that the list did not constitute a trade secret because the identities of ENV’s customers and other information contained in the list were generally available to the public. The court went further, though, and supported its conclusion that the information was not confidential by noting that it existed in ENV’s computerized database, “which can be accessed without use of a password by any ENV employee.”

Arguably, this language signals that simply preventing disclosure of business information to the outside world may no longer be sufficient to secure trade secret status. Circumstances may dictate that access to sensitive information be restricted to employees with a “need to know” in order to guarantee that the information will be deemed confidential and afforded the protection it deserves.

If you have any questions, please contact the Seyfarth Shaw LLP attorney with whom you work with or any Labor & Employment or Corporate Espionage, Trade Secrets, Unfair Competition attorney on the website at www.seyfarth.com.