



Invention & Industry

# Trade Secret Gaining and Losing Protection

Eric E. Johnson  
ericejohnson.com



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## Trade Secret - Gaining and Losing Protection

### Two requirements:

- Must be actually secret.
- Must be the subject of reasonable efforts to maintain secrecy.

### **Must be an actual secret:**

- Secret means "secret" in the ordinary sense.
- Two or even more independent parties can have the same secret.
- If a trade secret becomes generally known, it stops being a protectable trade secret.
  - Trade secret status can be lost by wrongful means
    - E.g., someone steals the secret and publishes it.
  - or non-wrongful means.
    - E.g., disclosure by mistake, or everyone else eventually figures it out independently.

### **Must be the subject of reasonable efforts to maintain secrecy**

- What's reasonable depends on the circumstances and how valuable the secret is.
- Might include:
  - Locks, fences, security guards, password protection, firewalls
  - Limiting the number of people who know
  - Splitting up knowledge among different people
  - Employee contracts, non-disclosure agreements, non-compete agreements

**Some practical advice for keeping  
trade secrets secret ....**

- Family
- Keep employees happy

**Trade Secret - Gaining and Losing Protection**

**Problems to look at:**

- "Leaving the barn door open" on p. 551 (+answer).
- "Sticky situation" on p. 551-552 (+answer).