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An Analysis on Trade Secret Protection in Food Industry

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ABSTRACT

Trade secrets are important in the food industry to safeguard confidential information like recipes, formulas, production methods and other processes that confer a competitive edge to food businesses. Trade secrets are not required to undergo the same scrutiny before the trade secrets (as patents) and protection does not lapse so long as the information remains confidential. Food industry tends to keep the recipes secret and the formula of the ingredients as a trade secret to retain the uniqueness of their products and establish the competitive edge in the market. Such secrets are also a source of product differentiation, brand recognition, and sustainability of the business in the food market. This research explores the notion and significance of trade secret protection in the food sector, and the use of trade secrets to maintain market competitiveness. It also explores the legal framework and regulations for protecting trade secrets at national and international level, including provisions under the TRIPS Agreement, which acknowledges undisclosed information as intellectual property. The study also assesses the techniques employed by food companies to protect their confidential information, including non-disclosure agreements, employment contracts, internal policies and procedures, documentation and record keeping, and technological controls and protection. The study also highlights various issues around trade secret protection, especially in today's digital era, with collaborations and cyber security threats. The threats that may cause the risk to the data are data leaks, insider threats, and legal complications. security of the sensitive business data. The study finds that the legal, internal and technological actions play an important role to safeguard trade secrets and encourage innovations and creativity competitiveness in the food industry.

Keywords: Trade Secret, Food Industry, Confidential Information, Competitive Advantages, Trade Secret Protection.

I. INTRODUCTION

Trade secrets are an important aspect of the food industry, where secret recipes, formulas and processes are used to provide a competitive edge. Trade secrets are different from patents, because they do not require public disclosure of an invention and enable companies to keep

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confidential information secret indefinitely as long as it remains secret. This includes the recipe for Coca-Cola and KFC secret blend of eleven herbs and spices.² This proprietary knowledge is part of a company brand identity and helps make products distinct. Food companies employ measures to maintain the confidentiality of their trade secrets. Such as Non disclosure agreements and very limited access to secret information. and internal security policies to ensure the confidentiality of information. Confidentiality is critical to the value of a trade secret, and the greater the secrecy, the more valuable the trade secret.

Trade secrets may include not only recipes, but also production methods, ingredient formulations, packaging methods, franchising models and business practices. In the tech-enabled food industry, investments are made in the development of functional foods, molecular food engineering, and packaging technologies. Confidentiality is important to ensure companies maintain their competitive advantage. In the restaurant industry and manufacturing sectors, companies are continually innovating with new recipes, processing technologies, and business strategies. With many innovations that are difficult to protect through intellectual property protection, confidentiality has emerged as a critical component of protecting the food industry commercial knowledge. As such, trade secrecy continues to be a vital way to protect new product development and business methods in the food industry.

II. CONCEPT OF TRADE SECRET

Trade secret is one way or other way present in all the forms of intellectual property until they become one fully developed form of IP say patent or copyright etc. An idea should not be revealed before its completion in terms of development as an IP because it can be shaped in a different and original IP. But there is still a certain type of information that may or may not fulfill the required criteria needed by the present form of patent or copyright, this does not make that information useless. Such information which can be used to gain an edge over the competitors in the market can be considered as trade secret if it is kept secret from the public and competitors. For example, the secret ingredient of coca-cola is still not out till now, in the beginning few people know and then it gets locked in the safe. Likewise secret recipe for KFC chicken is also a trade secret. These gigantic companies are the best examples of commercial success by preserving trade secret. The worth of such kind of information is undoubtedly secrecy and utility to the owner in giving a competitive edge. If this information is out and available for general use, then it does not hold any value and is of no use. One may call a trade

² Ankit Gupta, ROLE OF TRADE SECRET IN FOOD MANUFACTURING INDUSTRIES, Vol. IV E- J. ACAD. INNOVATION & RSCH. IN INTELLECTUAL PROP. ASSETS, pg 74- 77(2023)(last visited March 30, 2026).

secret the type of information that was to remain secret in order to gain a competitive advantage in the market.³

III. IMPACT OF TRADE SECRET IN FOOD INDUSTRY

Trade secrets ensures the protection of recipe in food industry. Chefs, restaurants or food companies should consider requiring recipients of the recipe to sign non-disclosure and non-compete agreements, and to be informed that a recipe is a trade secret. Franchise agreements will have particular provisions here. The restaurants and chefs ought to strategize on who holds the trade secrets in the recipes. This approach can be very successful and last indefinitely if the recipe is in fact not disclosed to anyone. To maintain the monarchy of monopoly, there will be the company trade secrets. For industries such as food and beverage, it is an evolving industry. So, there will be changes in the way companies protect their trade secret or intellectual property (IP).

In recent times, the steps for the use of technology to safeguard trade secrets in many industries, including the food and beverage industry, is increasing, such as Coca Cola, created in 1886 by Dr. John S. Pemberton⁴. For example, food companies are beginning to use blockchain technology, to securely record and manage information about production products, access to information, and supply chain. This lessens the chances of misappropriation of trade secrets or unauthorized access. In the meantime, trade secret assists in receiving a greater profit to the companies due to their primary trade ingredients. In case we take the example of India, it does not stipulate the trade secret in its laws. But India does practice trade secrets. Some time, food industries may not reveal the secret ingredients from the replicating industries. So, the only function of the companies is that earning profits. So, they want to dominate the marketplace by providing the good quality of food.

IV. TRADE SECRETS IN THE RETENTION OF COMPETITIVENESS OF THE FOOD INDUSTRY

Traditional food business depends on trade secrets that it enjoys a competitive advantage in the business market. Such trade secrets may be in the form of secret recipes, methods, processes and ingredients that are passed on by one generation to the other. The trade secret that takes place the most often in the conventional food business is the company recipe. The recipe to Coca-

³ Trade secrets protection in the food and beverage sector, BIRD & BIRD | INTERNATIONAL LAW FIRM, <https://www.twobirds.com/-/media/pdfs/brochures/food-and-beverage/trade-secrets-in-the-food-and-beverage-sector.pdf> (last visited March 30, 2026)

⁴ Yadharthana K. Parkkavi E, PROTECTION OF INTELLECTUAL PROPERTY RIGHTS IN FOOD INDUSTRY IN INDIA, Volume IV INDIAN J. INTEGRATED RSCH. L., (last visited March 25, 2026).

Cola or the KFCs are such secret mixture of eleven spices and herbs⁵. These are recipes which are kept as a secret have passed down through the years and form part of the brand. By maintaining shrouding of these recipes, the traditional food businesses would be able to create individual and differentiated taste which assist in distinguishing them with the rest of the brands. One more significant trade secrets, which are involved in the classic food business, is the utilization of particular ingredients.

Thus, the traditional food businesses may make a specific kind of spices or fruit or vegetable which exist in a localized form only. These ingredients have the ability to give the unique flavor and texture to the product, which may be difficult to copy. Techniques or methods may too be trade secrets in traditional food businesses. As an example, the method of preparation of artisanal bread and smoking technique of meat may be highly confidential secrets which offer special taste or adding a texture to the end product. The trade secrets will be instrumental in maintaining the competitiveness of the traditional food products with uniqueness and distinction, and this is what industry offers. Secrecy of their trade By keeping their trade secret. therefore, old-fashioned food corporations can create a brand image, be distinguished and stand out retain customers. Without the investigations regarding its efficacy, these trade secrets can provide traditional food businesses with a competitive advantage as well edge, as they allow them to sell their unique and better products at a high price.

V. LEGAL FRAMEWORK FOR PROTECTING TRADE SECRETS IN THE TRADITIONAL FOOD BUSINESS, AND VARY ACROSS JURISDICTIONS:

Secrecy in the traditional food industry is not a similar case in the various countries. The trade secrets are generally safeguarded by the national laws, although some are also present international treaties, including, the Agreement on Trade-Related Aspects of Intellectual Property. Some form of protection can be found in rights (TRIPS). The members of the TRIPS are obliged. Article 39(2) to safeguard information which was not disclosed. Members of the TRIPS have the obligation under Article 39 to maintain information that was not publicized. Under Article 1(2) of TRIPS, one of the types of intellectual property is called Undisclosed Information.⁶

In the United States trade secrets are safeguarded by state level and the country lacks a federal trade secret law. The commonest trade secret is the Uniform Trade Secrets Act (UTSA). The

⁵ Ankit Gupta, ROLE OF TRADE SECRET IN FOOD MANUFACTURING INDUSTRIES, Vol. IV E- J. ACAD. INNOVATION & RSCH. IN INTELLECTUAL PROP. ASSETS, pg 74- 77(2023)(last visited March 30, 2026).

⁶ Vandana Pai Ramya Seetharaman, Legal Protection of trade secrets, 1SCC(jour)22 (last visited March 27, 2026).

United States law, and has been passed in 48 states. The trade secret under the UTSA is data which in itself has an economic significance, as opposed to being typically known or easily identified which can be known by other persons, and is liable to justifiable steps to secure its confidentiality.⁷ Trade secrets in Europe are guaranteed by the Trade Secrets Directive that was adopted in The Directive identifies a trade secret as information that is confidential, and has a commercial value as it is a secret and has been open to reasonable precautions to remain a secret. The Directive requirements that the protection is provided by EU Member States in the cases of unlawful acquisition, use or disclosure of a trade secret. The laws and regulations exist to defend trade secrets in various countries. For example, Unfair Competition Prevention Act and in Japan, trading secrets are safeguarded. Another measure that China has undertaken to protect its trade secrets is the Anti-Unfair Competition Law.

VI. METHODS OF PROTECTING TRADE SECRETS IN THE FOOD INDUSTRY:

Trade secret protection is important to the food industry, where many companies seek to gain competitive advantage through their confidential recipes, production techniques, formulas and business plans. One of the important methods of protecting trade secrets is through employment agreements. As the employers provide the employment, and depending on the need, the employers can add confidentiality, non-disclosure and non-compete agreements to employment or in the separate agreements with employees. The agreement may include the restriction on disclosure of particular type of information, mode of using certain information and restriction on disclosure of information after termination of employment. Such contractual agreements are must to ensure that employees having access to the business information do not use them for their personal benefit or disclose to competitors and hence helps in protecting the organisation's trade secrets.⁸

Another way of protecting trade secrets is Development of a trade secret policies. These are necessary for those companies who primarily rely on their trade secrets for their business growth. An easy way to develop this policy is to categorize and prioritize the business information as a trade secret according to its value and sensitivity. In these circumstances it is important for the employees to understand and agree to the policy and also to the consequences of breach of such policy Implementing these policies requires signing of acknowledgement to this effect. This ensures that the employees not only aware of the policies but also helps an

⁷ Trade secrets protection in the food and beverage sector, BIRD & BIRD | INTERNATIONAL LAW FIRM, <https://www.twobirds.com/-/media/pdfs/brochures/food-and-beverage/trade-secrets-in-the-food-and-beverage-sector.pdf> (last visited March 30, 2026).

⁸ Himanshu Rana Dr. Amit Dhall, Strengthening Trade Secret Protection For India's Food Industry, Volume VII INDIAN J.L. & LEGAL RSCH., (2025) (last visited March 27, 2026).

enterprise to have a robust internal mechanism for protection of its business secrets.

Non-disclosure Agreements (NDAs) are also another good method of safeguarding trade secrets. NDAs can be signed between business and employees and third parties. Especially in context of third parties such as independent contractor while discussing any business prospects and ventures such agreements can be signed. Thus to some extent, the third party can be prohibited from disclosing any of the trade secrets. So, in this way NDAs are very much important to preclude any misappropriation of the trade secrets and to maintain confidentiality of the trade secrets that are important for the businesses. Good Documentation is also considered as quite essential to the business to maintain records of the trade secrets created by them and maintain records that the trade secrets is created by them. Similarly, any subsequent updating of the trade secret also need to be documented. These are very helpful in establishing their ownership of the “trade secrets. Moreover, these records are also important as it may be used as a evidence for any dispute and it can be strongly argued that they are the rightful owner of the trade secrets.

Moreover, another critical aspect to protection of trade secrets is implementation of sufficient security measures. The business may develop a security system for protection of trade secrets. Under the security clearance plan, the business can choose to release the trade secrets and other confidential information to a select number of persons. In an electronic format, the companies can adopt proper software programs, virus check, firewalls and other security and authentication systems to protect their trade secrets. These measures can prevent unauthorised access, data theft and cyber attacks, thus ensuring the protection of trade secrets from potential misuse.⁹

VII. CHALLENGES IN PROTECTING TRADE SECRETS IN FOOD INDUSTRY:

The problems and risks of the protection of trade secrets on business relations, in general include breaches, lax laws and risks caused by technology in the form of threats of cyber attack and working with untrustworthy software that makes the risk of data leakage more likely. In the food sector, firms might possess trade secrets that involve secret recipes, formula, preparation and manufacturing process. Trade secrets may be lost when people work in a company and share confidential information without ensuring that it is secured. This may lead to losses of money and image to the company. There are also cases of leakages of trade secrets in the corporate partnerships within the food industry due to various reasons such as the disclosure of trade secrets. When a company does this, it exposes itself to the possibility of leaks if

⁹ Mukul Bhati, PRESERVING THE RECIPE: EXPLORING THE IMPORTANCE OF TRADE SECRETS IN SAFEGUARDING THE TRADITIONAL FOOD BUSINESS, Volume V INDIAN J.L. & LEGAL RSCH. Pg 5690-5705 (last visited March 25, 2026).

appropriate confidentiality measures are not in place. Also, improper conduct of employees, as has been witnessed in several cases, may lead to the former employees and third parties using information to get a competitive advantage. The cultural differences, and cultural as well as value differences between parties in the food business partnerships can lead to conflict, which may have a detrimental impact on joint work and leaks are likely to occur. Information leakage may also take place through overcollaboration.¹⁰

The challenge of trade secrets in the food industry may also arise by emerging technologies. The digital media used by the food companies to communicate, control the supply chains and product development creates the danger of sensitive information leaking. Teamwork and information exchange enhance the probability of confidential information being exchanged which could be detrimental to the competitive edge of companies. A second issue of the digital era regulation is specifically in the area of data protection, cybersecurity, and e-commerce. This may be challenging due to a number of factors, among them being the disparities in technology infrastructure, ignorance of the legal guidelines by the society, and the need for harmonization of law across countries. These conditions demonstrate that proper legal control, security and a concerted effort to solve such issues are the key to protection of trade secrets in the food industry in this age of technological advancement and digitalization.

There are also implementation constraints for trade secrets in the food industry in the digital era. These limitations are the many regulations of technology related that are found in different laws and are therefore hard to know and apply uniformly, the absence of harmonization between the traditional and digital laws and absence of coordination between the government, law enforcement agencies and digital business platforms and there remain cyber threats and the abuse of digital business operations that may cause losses to companies operating within the food industry in the digital world. In order to address these challenges, a holistic and responsive legislative framework is required, to enhance protection of trade secrets in the food industry. Another problem is litigation to defend innovative work and creations can be costly and time-consuming. Food businesses are also unable to defend their trade secrets and intellectual property due to the litigation costs.

VIII. CONCLUSION

Protection of trade secrets is instrumental in the food industry, where many businesses would necessitate confidentiality of information including recipes, ingredient recipes, and preparation

¹⁰ Ankit Gupta, *ROLE OF TRADE SECRET IN FOOD MANUFACTURING INDUSTRIES*, Vol. IV E- J. ACAD. INNOVATION & RSCH. IN INTELLECTUAL PROP. ASSETS, pg 74- 77(2023)(last visited March 30, 2026).

procedures and manufacturing procedures among others as a means of ensuring their differentiation and competitive strengths. The trade secrets fit within the food industry unlike any other kind of intellectual property, which require disclosure, and trade secrets are a source of long-term protection. The research notes that, besides, trade secrets help in differentiating products and branding, they also help food companies to remain competitive in the market and retain their customers. However, the increasing popularity of digital technologies, the growing intensity of business relations, and the alteration of the market situation have become a significant jeopardy of the trade secrets protection in the food industry. Data breaches, malpractices by the employees, cyber threats, and legal challenges are some of the threats that can weaken the safeguard of valuable business information. As such, food companies should pursue a middle ground, which includes great legal adherence, high security standards, and applicable management strategies. In conclusion, protection of the trade secrets should be strengthened by incessantly abiding by technological changes and the changing nature of business. An all-embracing and proactive strategy is desired to protect confidential information, support innovation, and create sustainability of the food industry.

IX. REFERENCE

1. Trade secrets protection in the food and beverage sector, Bird & Bird | International Law Firm, <https://www.twobirds.com/-/media/pdfs/brochures/food-and-beverage/trade-secrets-in-the-food-and-beverage-sector.pdf> (last visited March 30, 2026).
2. Ankit Gupta, ROLE OF TRADE SECRET IN FOOD MANUFACTURING INDUSTRIES, Vol. IV E- J. Acad. Innovation & Rsch. inIntellectual Prop. Assets, pg 74- 77(2023)(last visited March 30, 2026).
3. Himanshu Rana Dr. Amit Dhall, Strengthening Trade Secret Protection For India's Food Industry, Volume VII Indian J.L. & Legal Rsch., (2025)(last visited March 27, 2026).
4. Mukul Bhati, PRESERVING THE RECIPE: EXPLORING THE IMPORTANCE OF TRADE SECRETS IN SAFEGUARDING THE TRADITIONAL FOOD BUSINESS, Volume V Indian J.L. & Legal Rsch. Pg 5690-5705 (last visited March 25, 2026).
5. Vandana Pai Ramya Seetharaman, Legal Protection of trade secrets, 1SCC(jour)22 (last visited March 27, 2026).
6. Yadharthana K. Parkkavi E, PROTECTION OF INTELLECTUAL PROPERTY RIGHTS IN FOOD INDUSTRY IN INDIA, Volume IV Indian J. Integrated Rsch. L., (last visited March 25, 2026).
