

Research on the Perfection of Legal Protection System of Commercial Secret in China

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Abstract. Trade secret has high economic value. If the operator obtains the trade secret of the competitor, he will have a very large competitive advantage in the competition. There are many shortages in the legal protection system of commercial secret in our country, such as ambiguous legal nature, scattered law provisions, low punishment degree and missing specific procedures. In order to solve these problems, this paper puts forward the corresponding legal measures to strengthen the protection of commercial secrets and ensure the healthy operation of China's market economy.

Introduction

Commercial secret is undoubtedly an excellent intangible asset of enterprises, which is of great value in modern market competition. To have a commercial secret is to occupy the market, helping enterprises in the fierce competition in the times to win the initiative to gain benefits. Therefore, in reality, competitors tend to gain access to other people's business secrets by unscrupulous means. Because of this, commercial secrets often become criminals hunting, became the object of infringement. Some enterprises have lost their competitive edge and are facing the problem of stopping production or going out of business. In the modern market economy environment, especially in China's market economy is not fully mature period of development, the commercial secret infringement is more common, more numerous. Cases of infringement of commercial secrets not only occurred in the domestic enterprises, China's commercial secrets also were stolen by other countries. With the rapid development of knowledge economy, the economic and trade links in the process of impact on business secret is more and more big, the community also gradually improve the legal awareness of the protection of commercial secrets, commercial secrets are all incorporated into the legal protection system, because in the legal level, China lags behind the protection of commercial secrets. There are many blind spots in the legal protection system of commercial secrets, which leads to the weakness of the protection of commercial secrets in China.

Shortages of Legal Protection System of Commercial Secret in China

Ambiguous Legal Nature. At this stage, there is no clear description of the provisions of the commercial secret which belongs to the ownership, the positioning is not clear. The concept of commercial secrets has been clearly defined in the law of unfair competition, but there is no clear definition of what kind of commercial secrets. According to the newly revised criminal law, the crime of infringing commercial secrets has been summed up in the provisions of the law on the crime of infringement of intellectual property rights, but there is no clear definition and description of the right of commercial secrets. Therefore, in our country, there is no scientific and unified definition of commercial concrete property secrets, which largely limits the protection of

commercial secrets of the legal function of play, bring a lot of difficulties to carry out the work. Compared with intellectual property rights, commercial secrets are different. Intellectual property rights are generated on the basis of legal provisions, and intellectual property rights must be legally registered and approved before they can be born. However, the commercial secret is different, and the right to obtain the commercial secret is based on the fact that the level of the specific conditions. The legal exclusive right of obtaining intellectual property rights is based on the open conditions. The protection of intellectual property rights by the state is within the validity period stipulated by law, and the property of this right will change if it exceeds the time limit prescribed by law. Therefore, only in authorized areas and countries can be protected. If it is beyond the prescribed area, it cannot be protected by law.

Scattered Law Provisions.The legal provisions on the protection of commercial secrets are too scattered. From the commercial secret protection legislation, in addition to the national level laws, there are local regulations and departmental rules and regulations, and different legal emphasis in the content of the different, no unified laws lead to the infringement of commercial secrets will be the main factor and objective way of identity and use different laws, such as the infringement is the board of directors of the company, it will apply the relevant provisions of the company law, if the infringer is the operator in the market economy, apply anti unfair competition law, which can actually find loopholes in the law, to avoid serious punishment for infringement of space. Therefore, from the legal point of view, China's commercial secrets will be significantly less than the international standard. But this standard does not accord with the market economy development today. The regulations have weakened the protection law of our country's commercial secret. China's legal protection of business secret not only content accounted for very little, and not a lot of commercial secret infringement specified in detail, which leads to the law enforcement departments according to the law to determine whether the infringement of business secret. When the rights of the people. The drawbacks caused by the scattered legislation lead to the separation of laws and regulations. The government cannot deal with the infringement of commercial secrets.

Low Punishment Degree.The present anti unfair competition law stipulates the amount of compensation for infringement of commercial secrets. These amounts mainly include all the profits obtained by the infringer in violation of the basis of compensation is not only the actual losses suffered by the victims in Inner Mongolia during this period. The victim's actual loss including right side development of commercial secret infringement cost, the process of loss of profits of infringing party tort investigation into the reasonable cost of litigation, in the process of investment and reasonable expenses. Compared with the amount of profit that the infringing party should obtain at the stage of infringement, the amount of the loss is much more. The amount of compensation for infringement of commercial secrets is the profit gained by tort in tort, rather than the loss suffered by the infringer. In reality, the loss includes the cost of exploiting the commercial secret by the oblige, the reasonable profit of the tort, the reasonable cost paid for the tort of the infringer, the reasonable expenses paid for the lawsuit and so on. This is far greater than the profits obtained by the infringer during the infringement.

Missing Specific Procedures.Violation of commercial secrets is a violation of intangible property. When the commercial secret is violated, it will cause disputes. This must follow the corresponding procedural rights, but the current domestic legal proceedings did not make provisions. The current legal rules on the related content of commercial secrets, including the definition, scope of business secret and infringement of business secret behavior elements. However, the definition of the concept of commercial secrets, the definition of technical information and business information has not been clearly defined, and did not list the relevant content. It provides that the commercial

secrets of the proceedings cannot be heard by the application. However, in other parts of the proceedings, Therefore, China's commercial secret litigation procedures and there is no practical operability of the law. In the commercial secret infringement litigation in present, may be due to the procedure and the leakage problem, although the law may apply for a public hearing is not, but the identification of officers of the court judges, clerks and appraisal institutions will be exposed to commercial secrets, which increased the business secret further large range may be leaked based on this consideration, many people choose to give up the lawsuit rights. Except the plaintiff, the defendant of commercial secrets may also be because the existing litigation procedures and disclosure, because the defendant to prove innocence, it will need to conduct cross examination, the defendant may need to show their own understanding of the business secret, if the plaintiff is malicious to exercise their litigation rights, commercial secrets through the legal plaintiffs the master program.

Countermeasures to Improve Legal Protection System of Commercial Secret in China

Clear Legal Attribute. We should define the attributes of commercial secrets in the law making. At present, there are two kinds of legal attributes of commercial secret in the world, one is to regard it as a separate property right, and the other is to bring it into the scope of intellectual property. From the perspective of China's commercial secret protection legislation, if the property is divided into property rights, so there is no China on the legal protection of business secrets in the framework of the relevant provisions of the scope of protection and the way beyond the existing law. Therefore, if it is regarded as a kind of property right, the existing law is not conducive to the protection of commercial secrets in practice. At present, in our country's law, commercial secrets tend is considered as a kind of intellectual property, but there is no clear legal attribute, which it may not get like copyright, patent and trademark legal protection as perfect, and the concept of commercial secret protection in our country is not business right. Thus, clear the legal attribute of business secret is to enhance our premise of commercial secret protection, on this basis can also put forward the commercial secret right concept, therefore, the protection of commercial secrets in the legal status and the current copyright and patent protection has the same status, therefore, our country should strengthen the legal protection business secrets, commercial secrets of the legal property must be determined.

Formulate Special Laws. We can make special laws for the protection of commercial secrets. To adapt to the new situation of social economic development, China should introduce a special law of commercial secret protection, clear the legal status of commercial secret protection, it also can solve the current law of business secret protection in China is not unified and even contradictory problems. In the special law, which should include the relevant definition of business secret, infringement of business secret rights relief, more detailed and comprehensive content, which have the maneuverability, so to maintain the business secret has a legal basis. Also we should add some banned content in other legislation, such as staff after the departure of the original units of the commercial secrets of the conservative, law enforcement needs to be refined and strictly abide by the relevant rules and regulations on the responsibility and punishment of administrative responsibility and civil liability, and then let the legislation can be more operational and practical. Our country can follow the practice of other advanced countries, for the commercial secrets of the separate legislation. The content and system of individual legislation are relatively flexible. Legal provisions should be able to combine the current status of the network environment, making the law more timeliness.

Increase Punishment Strength. In order to be able to bring a certain deterrent to the infringer, China's legislation in the future should be added to the punishment of some of the nature of the ordinance. It is worth noting that, once the formation of such compensation standards, there will inevitably be some law enforcement officers will abuse and expand the scope of the implementation of the situation. Therefore, our country can refer to the relevant laws and regulations in the United Kingdom, the United States and other countries, and combined with China's current network environment and market environment, to determine the amount of compensation will be less than 3 times the losses suffered by the owner of the power. This calculation is not the only way, the law enforcement departments also need according to the specific circumstances of the case, the illegal motive rights damaged, the infringer and the actual local economic level and other aspects of the final determination. Our country needs to rethink the elements of commercial secrets, will only be used as a reference value, which is more conducive to the protection of commercial secrets. China should also expand the qualification of the subject of infringement. In the current laws and regulations, China believes that only engaged in production and business activities as the main body of tort. In many cases of commercial secret infringement, the subject does not have this identity. This makes it impossible for the right holder to obtain relief according to law. Therefore, our country should amend the law to the subject of tort, the scope of its expansion to the general subject.

Improve Judicial Proceedings. We should improve the legal procedure of legal protection of commercial secrets. China's existing laws on commercial secret litigation procedures are too simple, and easy to bring about the problem of re disclosure of commercial secrets. Therefore, it is necessary for us to further improve the procedure of commercial secret litigation. Specifically, China's commercial secrets originally stipulated litigation cases can not apply for a public hearing, but in order to protect the business secret in the proceedings shall commercial secret litigation provisions shall not be heard in public, it can be sure not in open court show as a commercial secret evidence, to avoid two leaks. And in the case of commercial secret infringement, due to the secret nature of commercial secrets, we must adhere to the principle of inversion of burden of proof. This special way of proof helps to prevent the further expansion of commercial secret leakage. In addition, the personnel involved in the litigation process should have the duty of confidentiality to contact the commercial secrets, to prevent the commercial secrets from expanding the scope of knowledge because of the litigation procedures, resulting in the leakage and diffusion of commercial secrets. Therefore, it can be seen that in the legal protection of commercial secrets, it is necessary to establish a sound procedure.

Conclusion

In the increasingly competitive market environment, the role and influence of the commercial secret is growing in recent years. However, there are also many problems and defects in the legal protection of commercial secrets in China today. When the commercial secret of the enterprise is violated, the enterprise should adopt the legal weapon to protect the commercial secret and stop the illegal behavior to promote the healthy and sustainable development of the enterprise.

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