

# Conceptual Issues Relating to The Liabilities of Whistleblowers on Trade Secret in IP Regime with The Sustenance of Dupont V. Christopher Case- Analyse

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**Abstract**—The disclosure of trade secrets by whistleblowers raises complex legal, ethical, and practical challenges across various jurisdictions. Companies protect their intellectual property not only in the form of federal patents, trademarks, and copyrights, but also in the form of day-to-day information that runs their businesses. It could be customer lists, account books, future plans etc. This response explores the legal implications of such disclosures, the motivations behind whistleblowing, ethical considerations, industry-specific dynamics, and the potential legal consequences for whistleblowers. This paper delves into motivations driving whistleblowers, ethical dilemmas balancing public interest and proprietary rights, and industry-specific challenges, particularly in the extractive and technology sectors. It also pointed out the key trade secret case studies, such as DuPont v. Christopher and Pepsico v. Redmond, underscore evolving legal doctrines. This article analyses both the concepts and also suggests the need to strike a balance between public interest and corporate confidentiality. so that none leads to the detriment of lawful activities of the other.

**Index Terms**—trade secrets; whistleblowing; intellectual property; public interest; EU Whistleblowing directive; defend trade secrets act;

## I. INTRODUCTION

This paper examines the multifaceted legal, ethical, and industry-specific dimensions of disclosing trade secrets by whistleblowers across various jurisdictions, with a comparative historical analysis of trade secret evolution in ancient Indian texts. It explores legal frameworks in the European Union, United States, Ukraine, and Nigeria, highlighting protections and gaps for whistleblowers under laws

such as the EU Whistleblowing Directive and the U.S. Defend Trade Secrets Act. The analysis draws on insights from multiple jurisdictions, including the European Union, the United States, and others, to provide a comprehensive understanding of the issue. Trade secrets are a very important part of any economy as they are the foundation over which various big business houses such as TATA, IBM etc. are built. The unique taste of COCA COLA, the luster in BBLUNT hair products (via their mysterious ‘Shine Tonic’) and the recipe for Maggi Masala etc., are certain examples of trade secrets. These secrets are the reason that these products and producers have gained certain good reputation in the market. Therefore, it is obviously necessary for these producers to protect such secrets. The need for a law for the same has been discovered time and again. Therefore, it is no shock that it is a matter of great debate around the world.

## II. CONCEPT OF TRADE SECRET AND WHISTLEBLOWING:

The word ‘trade secrets’ commonly mentioned about that, these constitute the most vital piece of information and therefore businesses take great measures to prevent employees from divulging these trade secrets to others, out of a search for profit, carelessness, or even retribution<sup>1</sup>. In fact, trade secrets are exactly what gives a company its competitive edge. But such significance does not

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<sup>1</sup>Arttu Vesterinen, Why Is Whistleblowing So Important? FALCONY BLOGS (March4, 2024, 8:04 PM), <https://blog.falcony.io/>

warrant complete protection with no exceptions. While protection is important, it is equally important to identify the misconduct, if any, on the part of companies to avoid any danger to the public<sup>2</sup>.

The act of exposing the fraudulent activities of any corporation in the public interest is called 'whistleblowing'. Whistleblowing (Tattle-telling, telling on, being an informant, snitching etc. in a layman's language) is mostly tinged with a negative hue to its description. Betrayal tends to underline how the concept of whistleblowing is viewed in the corporate sphere. The term 'whistleblowing', however, is not always riddled with negative connotations only and can have some inherently positive outcomes. Whistleblowing means all the actions that reveal or report illegal activities or information<sup>3</sup>. Such activities may range from minor infractions to acts posing serious threat to people and institutions. The trade secret law provides defenses-clear public policy exception that could keep a check on the concealment of any illegal activity. To avoid clash between the two, a balance needs to be struck so that public interest is not hampered.

#### Legal Purview of Trade Secret laws in India

There is no official or sui generis law for trade secrets in India. However, the judiciary has applied constitutional law, contracts law and many other facets of law when dealing with cases of trade secrets. Trade secrets have been defined as "a formula, practice, process, design, instrument, pattern or compilation of information used by a business to obtain an advantage over competitors within the same industry or profession"<sup>4</sup>. The court has also stated that there is no expiry date for protection provided to

a trade secret. Since trade secret are the most valuable piece of information on which any business is carried on, their protection from any kind of frivolous mishandling is an absolute necessity. A number of legislations have been enacted by states across the globe to afford protection to their trade secrets within their domains. Some of these important legislations have been discussed here Section 27 of the Indian Contracts Act, 1872 states that any agreement made to stop someone from conducting a lawful profession, trade or business is void. However, the provision also discusses an extraordinary exception. If someone sells the good will of their business then the buyer can restrain them from conducting similar business in the near future or distance (limitations as defined by the agreement between the seller and the buyer). This exception gives space and creates room for non-disclosure agreements and non-compete contracts to exist. Thus, most of the trade secret suits discuss Section 27 of the Act. In India, The National Innovation Bill, 2008 was introduced for the purpose of codifying laws regarding confidential information or trade secrets, amongst various other purposes.

### III. TRIPS AGREEMENT

The TRIPS Agreement (w.e.f. 1 January 1995) is to date the most comprehensive multilateral agreement on intellectual property. Section 7 of the TRIPS Agreement protects undisclosed information (trade secrets, etc.) from any leakage. Articles 39 and 40 safeguard the holder of secret information from being forced to part with that information to anybody. According to Article 39.2, the protection applies to information that is secret and consequently has some commercial value and reasonable steps are taken to keep it secret<sup>5</sup>. The Agreement does not mandate that the undisclosed information should be treated as a form of property, but it does require that a person in control of such information must prevent it from being disclosed to, acquired or used by others without his/her consent in a manner contrary to honest commercial practices. Article 40 of the TRIPS

<sup>2</sup>Bret A Cohen, Michael T. Renaud, and Nicholas Armington, *Explaining the Defend Trade Secrets Act*, ABA BUSINESS LAW SECTION (Sep 20, 2016) [https://www.americanbar.org/groups/business\\_law/resources/business-law-today/2016-september/explaining-the-defend-trade-secrets-act/](https://www.americanbar.org/groups/business_law/resources/business-law-today/2016-september/explaining-the-defend-trade-secrets-act/)

<sup>3</sup>Katherine Williams, Whistleblower | Definition, Protection & Examples (11/21/2023) <https://study.com/learn/lesson/what-is-a-whistleblower-ethics-law-examples-of-the-whistleblower-protection-act.html>

<sup>4</sup>Indian Farmers Fertilizers Co-operative Ltd. v. Commissioner of Central Excise, (2007) 7 VST 6 CESTAT –New Delhi.

<sup>5</sup>Madeline Cahill and Charlie Hoge, *The Defend Trade Secrets Act Providing Immunity Notice to Employees — A Critical Question*, San Diego County Bar Association <https://www.sdcba.org/>

Agreement recognizes that certain licensing practices or conditions pertaining to intellectual property rights restraining competition may have adverse effects on trade and may impede the dissemination of technology. Member nations must adopt, in consistence with the other provisions of the agreement, appropriate measures to prevent or control such licensing practices which are abusive and anti-competitive<sup>6</sup>. In 1979, several U.S. States adopted the Uniform Trade Secrets Act (UTSA) which was further amended in 1985 with approximately 47 states having adopted it.

#### IV. JUDICIAL REVIEW

##### JUDICIARY HAS PLAYED A VITAL ROLE AS PRECEDENT IN HANDLING SUCH TYPE OF CASES

###### DuPont v. Christopher case

The landmark judgment of ‘E. I. DuPont deNemours & Co. v. Christopher’<sup>7</sup>, the court applied tort law when all else seemingly failed. The defendant was hired to take aerial shots of the plaintiff’s methanol plant. When asked by the plaintiff to reveal the client who asked for such shots, the defendant refused to share such information. The plaintiff moved to the court stating that the plant was producing methanol through a secret process that could be revealed easily through the aerial shots taken by the defendant. The defendant argued that he had done nothing illegal at all and was only performing his job. It was a case that made the court deliberate for long as there was no civil or criminal wrong being committed on the face of it. The court stated that it was evident that the trade secret was being misappropriated. They ultimately fell back on the law of tort and stated that the trade secret had been acquired through improper means by the undisclosed party. The court stated that “the airplane was the cloak and the camera was the dagger”. This case is a classic example of trade secret misappropriation where the court ruled in favor of DuPont, emphasizing the importance of protecting trade secrets from industrial espionage.

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<sup>6</sup>Kreindler & Associates, <https://blowthewhistle.com/> (last visited March 6, 2024)

<sup>7</sup>EI DuPont deNemours & Company v. Christopher, 431 F.2d 1012 (5th Cir. 1970)

###### Coca-Cola Formula Case<sup>8</sup>

Although not a court case, the Coca-Cola formula is often cited as a quintessential example of trade secret protection. The company’s rigorous measures to safeguard its formula have become a benchmark for trade secret management. This case illustrates the balance between maintaining secrecy and leveraging trade secrets for competitive advantage. J. Derek Mason, Gerald J. Mossinghoff and David A. Oblon, *The Economic Espionage Act: Federal Protection For Corporate Trade Secrets*, OBLON (Mar 1999) <https://www.oblon.com/publications/the-economic-espionage-act-federal-protection-for-corporate-trade-secrets> <sup>9</sup> (Saunders, 2006).

###### Pepsico, Inc. v. Redmond<sup>10</sup>

In this case, Pepsico sought to prevent a former executive from joining a competitor, Quaker Oats, arguing that he would inevitably disclose trade secrets. The court’s decision to grant an injunction based on the “inevitable disclosure” doctrine highlighted the challenges of balancing employee mobility with the protection of trade secrets. This case has influenced the development of non-compete agreements and the scope of trade secret protection (Rowe & Sandeen, 2012).

#### V. CONCLUSIONS

The disclosure of trade secrets by whistleblowers is a complex issue involving legal, ethical, and cultural factors. While the European Union and United States offer protections through the Whistleblowing Directive and Defend Trade Secrets Act, gaps persist in regions like Ukraine and Nigeria, requiring legislative reforms. Ethical considerations involve balancing protecting proprietary information with promoting transparency, especially in high-stakes

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<sup>8</sup>United States v. Forty Barrels and Twenty Kegs of Coca-Cola, 241 U.S. 265 (more) 36 S. Ct. 573; 60 L. Ed. 995

<sup>9</sup>J. Derek Mason, Gerald J. Mossinghoff and David A. Oblon, *The Economic Espionage Act: Federal Protection For Corporate Trade Secrets*, OBLON (Mar 1999) <https://www.oblon.com/publications/the-economic-espionage-act-federal-protection-for-corporate-trade-secrets> 10 54 F. 3d 1262 (7th Cir. 1995)

industries like technology, extractive, and health sectors. Ancient Indian texts, such as the Arthashastra and Manusmriti, reveal sophisticated systems for managing trade secrets, emphasizing their role in economic stability, social hierarchies, and cultural norms. Landmark cases like *DuPont v. Christopher* and *Pepsico v. Redmond* highlight the evolving legal landscape, while emerging challenges in the digital era demand adaptive strategies like robust cybersecurity and balanced legal frameworks. Global harmonization of trade secret and whistleblower protections is essential to support innovation, accountability, and public welfare. Future reforms should integrate ethical principles, enhance transparency in critical sectors, and draw on historical insights to create resilient frameworks that adapt to technological advancements and global commerce.