
Cover Story

Posted by Preston - 2008/03/12 14:11

I was reading the confidentiality article on this site and I have a question. If you have a competitor trying to buy your business, and, even under a confidentiality agreement you disclose your trade secrets to the competitor, what stops him from using those secrets against you? I understand that in a world that is perfect, they should not do this, but how likely is that? This is assuming the sale did not go through of course. Any tips on how to minimize the damage or get additional protection?

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Re:Cover Story

Posted by steve - 2008/03/12 15:26

A clause titled "Irreparable Harm" is usually included in the confidentiality agreement which will bind the buyer/prospect to a term of days/months/years in which s/he can not compete directly with Seller/discloser or solicit its employees/other trade secrets if a transactions is not consummated between the parties.

The truth is that people do infringe/breach these agreements and your cause of action is usually limited to litigation. If the infringer is uncollectable then what is your recourse?

So, the seller/discloser must research all potential buyers and limit disclosure to the minimum amount necessary without deceiving the buyer. Its a delicate practice that requires a lot of care.

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Re:Cover Story

Posted by norton - 2008/03/14 14:46

You may also want to consider phasing in certain trade secrets. Say for example you have a three step assembly process that is proprietary in nature. At the first level of commitment by the buyer, you disclose step one. Once you have reached another level of negotiation or commitment by the buyer, you may consider releasing phase two. But, even as you move forward with disclosures you may want to leave certain technical specifics out of the disclosures and make sure the buyer understands that until the point of actual sale. You just need to be a little creative and a lot careful and most issues like this can be resolved, it just takes a little more work on the front end.

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