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You worked hard for your trade secrets. Protect them.

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A criminal trial is underway in the U.S. District Court for the Northern District of Illinois, where the defendant, Robert O'Rourke, faces thirteen separate counts of trade secret violations. Under the subject federal statute, "trade secret" means any type of technical, engineering, financial, or other business information that derives independent economic value by not being generally known to—or readily ascertainable through proper means by—another person who can derive economic value from having or using the information. However, for any item of information to qualify as a trade secret, its owner, whether a company or an individual, must demonstrate that it took reasonable measures to keep the information secret.

According to federal prosecutors, O'Rourke had been a well-respected white collar employee of Dura Bar for roughly 30 years. He left the company in 2015 to work for a Chinese competitor, but not before he stole 1,900 of Dura Bar's proprietary files, including its "operational playbook." The prosecution calls Dura Bar the "gold standard" for continuous cast iron fabrication, with a market share of 90% and virtually no competition in North America due its decades of experience and aggregated know-how. That knowledge and experience, according to the prosecutors, enabled Dura Bar to perfect its customized manufacturing processes, minimize defects, deliver superior quality products, and thereby retain its commanding market share. The prosecution contends that O'Rourke's trade secret violations have substantially harmed Dura Bar's business and will continue to do so.

Meanwhile, O'Rourke's defense is straightforward, at least in concept. He does not deny that he took the information from Dura Bar; rather, he argues that he is not guilty of a trade secret violation because there are no trade secrets at issue in the case. According to O'Rourke, Dura Bar cannot establish that it took the statutorily-required reasonable measures to keep secret any of

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the information that he took when he left the company. O'Rourke argues that Dura Bar never labeled any of its information confidential, never made its confidential information known to its employees, never restricted any employees from accessing the information that O'Rourke took, and never implemented a policy regarding its confidential information. As O'Rourke's attorney observed of Dura Bar, "They either violate their own policy, or the truth is they don't think this stuff is confidential." In either scenario, the implication is that the prosecution cannot establish the existence of a trade secret within the meaning of the federal statute, much less convict O'Rourke for a trade secret violation.

Although O'Rourke's case involves a criminal prosecution, it has implications in the civil context as well. The Uniform Trade Secrets Act, widely adopted among the states, along with the federal Defend Trade Secrets Act, ascribe substantially the same meaning to "trade secret" as the statutory provisions at issue in O'Rourke's case. In that sense, the requirement that the owner of a trade secret maintain reasonable measures to keep it secret is universal in qualifying any item of information for trade secret protection.

As O'Rourke's trial comes to a close, it serves to remind companies to implement, to sustain, and, because technology continually evolves, cueing the law to evolve with it, to routinely revisit and upgrade the measures by which they protect their trade secrets. After all, your trade secrets are the lifeblood of your company. You could not have developed them overnight; nor can your competitors. So be sure to protect them. We can assist.

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