Journal OF LEGAL STUDIES - International Academic and Scientific Review published semi-annually by the Laboratory of Sovereignty and Globalization - Yahia FARES University of MEDEA
ISSN 2437-0304
EISSN: 2602-5108
Dépôt légal: 2015-3039
Volume: 12 Number: 01 Year : JAN 2026 P :422-434

Unfair competition involving trade secrets

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Received: 2025-07-17 **Accepted: 2026-01-11** **Published 27/01/2026**

Abstract:

This Study investigates the legal and economic structure of trade secrets protection, Trade secrets are among the topics dealt with in the TRIPS Agreement in Article 97, which set up a special system called undisclosed information and included it among the industrial rights, and the greater its value, the greater the attacks on it, given the ease of its exploitation, whether it is administrative or technological information , The final recommendations advocate for legislative initiative on trade secrets protection level and highlight the areas where intervention would be most beneficial in terms of balanced economic growth and competitiveness for the Internal Market.

Keywords: trade secrets, unfair competition, disclosure, TRIPS agreement.

الملخص:

بحثت هذه الدراسة في الهيكل القانوني والاقتصادي لحماية الأسرار التجارية، فالأسرار التجارية من ضمن المواضيع التي تناولتها اتفاقية تريبس في المادة 97 التي وضعت نظاما خاصا أطلقت عليه المعلومات غير المعلن عنها (undisclosed information) وأدخلته في عداد الحقوق الصناعية، وكلما ازدادت قيمتها زادت الاعتداءات عليها بالنظر لسهولة استغلالها سواء كانت معلومات إدارية أو تكنولوجية، لذا تدعو التوصيات النهائية إلى مبادرة تشريعية بشأن حماية الأسرار التجارية وتسلط الضوء على المجالات التي يكون فيها التدخل أكثر فائدة من حيث النمو الاقتصادي المتوازن والقدرة التنافسية للسوق الداخلية.

الكلمات المفتاحية: الأسرار التجارية، المنافسة غير المشروعة، إفشاء، اتفاقية تريبس.

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Introduction:

Innovations are considered one of the branches of industrial property, as previously mentioned, which means those rights that grant its owner an investment right for what he has achieved, and it occupies a special importance as it is the most important pillar of trade, and it has become a criterion for determining the extent of progress of countries. Innovations are also the first technological knowledge resulting from creative mental work**.**

The TRIPS Agreement aims at protecting intellectual property rights. "Over the long term, intellectual property should be treated on the same basis as other traded commodities, and appropriations or transfers of intellectual property at less than full value should be subject to the same considerations as any other below-value appropriation or transfer, whether prohibited, compensated for, or treated as other forms of economic aid"1. In a sense, the whole TRIPs Agreement bears on proprietary information be it protected by patents, copyrights, or designs and models. Nevertheless, only Article 39 TRIPs covers what the intellectual property parlance labels "proprietary information" that is confidential information which is otherwise not protected by patents, copyrights or designs and models. Up to now, the usual terminology to connote such information has been "trade secrets", and the wording of Article 39 TRIPs should not detract from this understanding of the subject matter[1].

Trade secrets are considered one of the components of commercial and industrial projects in this era, as it is one of the main axes on which many projects rely to maintain their uniqueness and superiority and increase their competitiveness because of these secrets' great impact on improving production, so many project owners prefer to keep their technical discoveries secret Without applying for a patent in this regard, even if the legally necessary conditions for obtaining a patent to protect his innovation are met, he may secretly keep some information related to the invention so that the information disclosed in the patent is not sufficient to exploit the invention effectively, and the value of trade secrets has increased not because it is just information; Rather, because of the important and influential economic value that the latter gives, it has therefore become an integral part of industrial property rights.

we pose the following problem what exactly is a trade secret under the proposed directive?

The first section: the concept of commercial secrets

Accordingly, in this section, we will talk about the definition of trade secrets, and then distinguish them from patents, in order to reach the conditions for their validity.

[1] François Dessemontet, Protection of Trade Secrets and Confidential Information, n CM Correa and AA Yusuf (eds), Intellectual Property and International Trade: The TRIPS Agreement (2nd edn Wolters Kluwer Alphen aan den Rijn 2008) 270, 281 believes that 'the false or misleading bit of information may be protected as well as the true, "authentic" information' and cites Swiss case law in agreement. However, he also refers the clean hands doctrine 'which means that the owner of untrue or misleading information will very often not be deserving of any protection' (ibid, 281).

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First: definition of trade secrets[2]

In order to take note of a comprehensive definition of trade secrets, we will get the beginning of the legal definition of trade secrets through American law, as it was the first to care about trade secrets, The United States of America uses the term "trade secret", while European countries use the term "know how", and both Britain and Australia use the term "confidential information". As for the TRIPS Agreement and most Arab countries, including Iraqi law, they use the term "undisclosed information".

A- The legal definition of trade secrets

Considering that the United States of America was the first to pay attention to trade secrets, the Restatement of tort for the year 1939, prepared by the American Law Institute, was defined in Section 757 as "any description, design, method, or collection of information that is used in work and given to its owner." The opportunity to gain an advantage in the face of competitors who are ignorant of it or have never used it.[3]

from the foregoing that the definitions of this subject have differed, which indicates that a unified definition of trade secrets is not possible. However, it can be said that trade secrets are nothing more than information, methods or a specific program, techniques, methods of economic value that are kept secret by their owner because they can To be the result of extensive research and experiments carried out.

However, by referring to the Algerian legislator, we find that he did not regulate commercial secrets by a law of his own, but the expressions related to commercial and industrial secrets we find in many laws, such as Order No. 03/07 related to patents in Article 59: "… by not disclosing his industrial and commercial secrets Likewise, Article 07, the eighth paragraph of Law No. 90/11, which includes the Labor Law:[4] "They should not disclose professional information related to techniques, technology, manufacturing methods, organization methods, and in general, they should not disclose the content of internal documents of the user organization." Article 73 of the same law stipulates: "Disclosure of professional information related to technology, industry methods, organization, or internal documents of the user organization." As stipulated in Order No. 04/02 related to unfair practices in Article 27: "Unfair business practices are considered unfair in the context of the provisions of this law, especially those practices through which the economic aid performs the following … Benefiting from professional secrets as an old employee or A partner to dispose of it with the intention of harming the employer or the old partner.

[2]. information, as for the UAE Industrial Property Regulation and Protection Law No. 17 of 2002, the term scientific study was used, while the Algerian legislator used the term professional secrets.
[3] Restatement First of Torts, section 757, Cmh, (1939).
[4] Article 07, the eighth paragraph of Law No. 90/11 related to labor relations, dated April 21, 1990

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we note that the Algerian legislator did not regulate it by a special law, as some comparative legislation did, such as the Jordanian law, for example, although trade secrets occupy an important place in the TRIPS Agreement, which requires countries wishing to join to go along with its provisions, as well as a matter that will raise many legal problems.

B- Jurisprudential definition of trade secrets

Jurisprudence did not agree on a specific unified definition of trade secrets. Some of them defined it as: "a set of scientific knowledge, experiences and skills acquired in a project, which were applied in the production process and kept secretly by the project to increase its competitiveness because of its great impact on improving its products or reducing its expenses."[5]

It also means: "any information that can be used in carrying out work or in another project and has a value that is considered and confidential, so that we give a current or potential economic advantage to its owner in the face of others."[6]

The protection prescribed for trade secrets does not focus only on technical information or that the project possesses; It also includes any information that has an economic value to include information related to commercial, financial and administrative aspects.

Among the confidential information we find: business plans, trade operations, customer list, supplier list, product specifications, technical data, engineering drawings and specifications, source code...

In more detail, it is mentioned: "Information that is the result of great efforts reached by its owner and kept confidential, and has a commercial value arising from this confidentiality, including any design, method, or set of technical information or a specific program that includes technical knowledge that has commercial value in itself."[7]

We see that the concept of trade secrets is flexible and broad, as it includes several commercial, financial, and economic aspects. It cannot be applied to a specific scope without others, and most of the jurisprudential definitions tend to what the American legislator went to.

A trade secret is defined as any information that is:

(1) not generally known to the relevant business circles or to the public;

(2) confers some sort of economic benefit on its owner. This benefit must

[5]ادريس فاضلي، الملكية الصناعية في القانون الجزائري، ديوان المطبوعات الجامعية، د ط، 2013،الجزائر، ص 124. .

[6]حسام الدين عبد الغني الصغير، حماية المعلومات غير المفصح عنها والتحديات التي تواجه الصناعات الدوائية في الدول النامية، دار الفكر الجامعي، الإسكندرية، الطبعة الأولى، 2003، ص 20.

[7]حسام عيسى، نقل التكنولوجيا، دراسة في الآليات القانونية للتبعية الدولية، المستقبل العربي، القاهرة، د ط، 1987، ص 114.

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Derive specifically from the fact that it is not generally known, and not just from the value of the information itself; and the subject of reasonable efforts to maintain its secrecy.

A trade secret continues for as long as the information is maintained as a trade secret.

Anything that is easily and completely disclosed by the mere inspection of a Product put on the market cannot be a trade secret[8].

C-Economic definition of trade secrets

A trade secret is any practice or process of a company that is generally not known outside of the company. Information considered a trade secret gives the company a competitive advantage over its competitors and is often a product of internal research and development.

-Trade secrets are secret practices and processes that give a company a competitive advantage over its competitors.

-Trade secrets may differ across jurisdictions but have three common traits: not being public, offering some economic benefit, and being actively protected.

-U.S. trade secrets are protected by the Economics Espionage Act of 1996.

To be legally considered a trade secret in the United States, a company must make a reasonable effort in concealing the information from the public; the secret must intrinsically have economic value, and the trade secret must contain information. Trade secrets are a part of a company's intellectual property. Unlike a patent, a trade secret is not publicly known[9].

The federal law defines trade secrets as "all forms and types of" the following information:

Financial, Business, Scientific, Technical, Economic, Engineering, Such information, according to federal law, includes: Patterns Plans Compilations Program devices Formulas Designs, Prototypes, Methods, Techniques, Processes, Procedures, Programs, Codes…

Second - Conditions for the Validity of Trade Secrets:

In order to protect the trade secret, certain conditions stipulated in the TRIPS Agreement must be fulfilled. They must be met together for the secret to be protected, and the owner has the right to prevent others from accessing or infringing on it. These conditions include those related to the information itself, and others related to the holder of the information.

A- The information must be of a confidential nature

Confidentiality is considered one of the most important characteristics of the information on which the protection prescribed by law for trade secrets is based, and it is a necessary and

[8] MODULE 04, Trade secrets, WIPO publications, p 05, Posted on the site : www.wipo.int
[9]JAKE FRANKENFIELD, Trade Secret: Definition, Examples, Laws, Vs. Patent , 22 Dec 2022.

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essential condition for it to enjoy legal protection, and it is the focus of the matter with regard to trade secrets, so the other conditions do not take effect except through confidentiality that gives its owner an advantage over other competitors what is meant by confidentiality in this field is the non-disclosure of commercial, industrial, technical or other information in the field of specialization to others in a way that suggests that the possessor is not keen on considering them secrets that make him a competitive position distinct from others.[10]

Confidentiality is not required to be absolute, as information and technical knowledge do not lose their confidential nature simply because a limited number of people know them. Disclosure of the owner of the trade secret to a small and limited number of persons (such as project workers, consultants or technical experts) leads to the disappearance of confidentiality. information and knowledge, as long as there is an obligation on them to keep these secrets and not disclose them.

According to my opinion, the definition of confidentiality differs according to the person to whom it is addressed. If we are in front of the owner of the information, it is an obligation to refrain from doing an action that means confronting himself in not disclosing any information to others, and also includes the obligation of third parties who are permitted by law to have access to confidential information, such as workers who are prohibited from Disclosure or access to others. Confidentiality of information is, in fact, a relative issue, not absolute, because this information may be known to other persons other than its owner, and there is no harm in that within the framework of trust relationships. This is because the secret information may be known to more than one project, and yet it remains confidential as long as that information is not available to the public from the owners of the same craft.[11]

B- The existence of a commercial value for the information

In order for information to be confidential, including the protection provided for in Article 39, the second paragraph of the TRIPS Agreement, it must be of commercial value,[12] What is meant by this condition is that commercial information in general has economic benefits for the project that it owns, in the sense that the project's use of this information would achieve a return for it, whether it represented an increase in the profits of the project, or reduce losses, or would attract new customers to other benefits that Get used to the projects, each according to the nature of his activity;[13] It is sufficient to fulfill the condition of having an economic value for the information, the possibility that the confidential information will have an economic value in the future, and it is not required that its value be a case. The TRIPS Agreement is an agreement for

[10] سميحة القليوبي، الملكية الصناعية، دار النهضة العربية للنشر والتوزيع، القاهرة، الطبعة الخامسة، 2005، ص 468.
[11] عمر كامل السواعدة، الأساس القانوني لحماية الأسرار التجارية، دراسة مقارنة دار حامد للنشر و التوزيع، الطبعة الأولى، 2009 ، ص 56.
[12] أحمد علي الخصاونة، الأحكام القانونية للمنافسة غير المشروعة والأسرار التجارية فى القانون الأردنى،منشورات دار وائل، الطبعة الأولى، 2015، ص 131.
[13] سميحة القليوبي ، المرجع السابق، ص 429.

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the protection of trade-related intellectual property, that is, that represents economic or commercial value to its owners.

c- The holder of the information takes reasonable measures to maintain confidentiality

This condition was explicitly stipulated in Article 39 of the TRIPS Agreement: "2- Such protection shall be provided for undisclosed information, … subject to reasonable measures in order to maintain its confidentiality." For the information to enjoy legal protection because it is confidential, the owner of the right to it must take appropriate action. Reasonable measures to maintain its confidentiality, by the obligation of everyone who has seen or obtained the trade secret to preserve it and not violate it, and to take the necessary measures commensurate with the nature of these secrets so that only those dealing with the project or the category of experts or those concerned have access to them, i.e. the knowledge of a number It is very limited to these secrets or to put them in a closed place, and this is for small projects. As for large projects, they need more complex measures to preserve their secrets, such as using secret codes and monitoring the places where these secrets are placed through cameras, as well as setting alarms in anticipation of breaching security systems and prohibiting entry except for specific individuals. To the places where these secrets are placed, and to place warnings on the files that are considered confidential, indicating that they may not be viewed and placed advertisements in the industrial or commercial facility reminding workers of the need to preserve trade secrets.[14]

This condition represents a self-commitment that the owner of the confidential information signs on himself on the one hand, and binds it to others who have the right to view that information on the other hand. What is required to be achieved is relative and not absolute. Thus, the owner of confidential information has a duty to preserve it within reasonable and acceptable frameworks and within the accepted limits.[15]

The second section: images of infringement of trade secrets

One common trade secret is the client list. What happens if data protection regulations have been violated in the collation of such a list? What if the trade secret is a tax evasion (or fraud) scheme? In a German case decided in 1931,68 mentioned by Gomez Segade,69 an employee had revealed that his employer was adding water to the marketed milk.

The employee was sued for trade secret violation, but the court considered that this behavior did not amount to trade secret violation. Notwithstanding, no direct answer was given to whether such information was a trade secret. In fact, the discussion can be focused on whether there is an illegal trade secret, although its disclosure under certain circumstances will be admitted or, on the other hand, there is no trade secret protection at all, since illegal trade secrets

[14] ندوة الويبو الوطنية عن الملكية الفكرية المنظمة من قبل المنظمة العالمية للملكية الفكرية (الويبو) بالتعاون مع جامعة القاهرة، جمهورية مصر العربية، (من 17 إلى 19) شباط 2003، ص 13.
[15] أحمد علي الخصاونة، المرجع السابق، ص 137.

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cannot be allowed[16].

Among the most important forms of violation of trade secrets:

First: Violating the confidentiality of entrusted information or encouraging its breach

Which assumes the existence of a person who is entrusted with the confidentiality of information by virtue of his work or his relationship with the owner of the commercial secret, and that he used his capacity to initiate the act of breaching the confidentiality of the information he was entrusted with, whether by leaking it, publishing it, or providing others with it in a manner that removes its confidentiality and makes his act an infringement of the commercial secret. which he possesses and is entrusted with.[17]

In this regard, Article 376 of the Algerian Penal Code stipulates that: "Whoever embezzles or wastes, in bad faith, commercial papers, money, goods, securities, receipts, or any other papers that contain or prove an obligation or discharge that were not delivered to him except on the basis of A means of authorization, deposit, agency, mortgage, or regular use or performance of a paid or unpaid work, on the condition that it is returned, presented, used, or used in a specific work, to the detriment of its owners, or those who seized it or possessed it is considered a perpetrator of the crime of breach of trust ».[18]

The French legislator also criminalized it in Article 314/1 of the French Penal Code[19], However, this crime does not include and does not extend to all acts that may affect the commercial secret.

Second: Disclosure of commercial secrets after leaving the job

Employees are generally entitled to use and exploit all the skills, experiences and knowledge that they gained from a previous position they occupied. When a new position is created, there is an imbalance between the acquired knowledge, previous experience, and commercial business secrets, and what the worker has to present in the new position. Therefore, in many cases Sometimes, it is difficult to draw the line between legitimate use of what has been obtained and unfair disclosure of confidential information from prior work.[20]

Therefore, in order not to fall into this problem, the employer can take precautionary measures, such as stipulating this condition in the work contract, because the obligation not to disclose

[16] Nuno Sousa e Silva, What exactly is a trade secret under theproposed directive?, Journal of Intellectual Property Law & Practice, 2014, Vol. 9, No. 11 ARTICLE, P 928.

[17] أحمد علي الخصاونة، المرجع السابق، ص 144.

[18] Order No. 66/156 containing the Penal Code of June 8, 1966, amended and supplemented by Law No. 02/16 of June 19, 2016, J.R. No. 37.

[19] L'article 314/1 : « L'abus de confiance est le fait par une personne de détourner au préjudice d'autrui, de fonts, de valeurs ou un bien quelconque qui lui ont été remis et qu'elle a acceptés à la change de les rendres, les représenter ou bien faire un usage déterminé » , code pénal français, derniere modification le 16 Décembre 2017 , document généré le 12 janvier 2018 , copyright Legifrance.

[20] Disposition types sur la protection contre la concurrence déloyale articles et notes présente par le bureau d'L'OMPI, Genève, 1996, p 52..

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commercial secrets is an obligation that follows the worker even after he loses his status as a worker, and he must abide by confidentiality, not only towards individuals, Rather, even the direction of departments to which the employee owes a relationship of subordination, which is approved by Article 48 of the Algerian Public Service Law: "Employees are not freed from the duty of professional secrecy except with a written authorization from the qualified peaceful authority."[21]

If the worker's term of work ends by another employee, it does not constitute any violation of the law as long as the principle is freedom of work,[22] Nor does this principle conflict with the right of the worker to change his job in order to improve his professional or financial situation, but in the event that a contract is concluded that includes a non-competition clause, the worker who violates that has committed a contractual error, which is competing with the original employer or working for a competing institution. As for the new employer who employed the worker and who knows that he had previously worked for his competitors, he is not considered to have committed any wrongdoing punishable by law as long as the principle is freedom of employment. The new employer has committed a tort error.[23]

Third: Enticing employees of the entity that possesses confidential information

This act is represented by the attempt of any competing person to access and obtain confidential information away from any trouble or effort, by influencing the workers and exploiting what puts them and pushes them to accept their request in exchange for a monetary amount or any benefit or grant in kind, and everything that can be considered as a form of bribery[24]. It affects the same worker, and it is a method used by ill-intentioned people to obtain information in a dishonest way. Bribery of workers is one of the worst forms of corruption in order to obtain confidential information that is not the right of its requesters. Right holders and deprive them of their intellectual efforts of economic value.

The owner of the right to a trade secret can immunize his worker from this influence by ensuring that his material needs are sufficient with the incentives, advantages and additional rewards he decides for him, with the aim of protecting the trade secrets in their possession by virtue of the undertaking not to disclose them, and coupled with penalties and penalties that have been agreed upon in advance to prevent influence. They are against them from any competitor, so tempting employees is an immoral behavior that a competitor tends to encourage any former employee or current employee of the owner of the project for his work to disclose information

[21] Order No. 06/03 containing the general organic law of the civil service, dated July 15, 2006, Jr No. 36, dated July 16, 2006.

[22] Article 55 of the 1996 Constitution of the People's Democratic Republic of Algeria, J.R. No. 76, dated December 08, 1996.

[23] زوبير أرزقي، حماية المستهلك في ظل المنافسة الحرة، مذكرة لنيل شهادة الماجستير في القانون، فرع المسؤولية المهنية، الحقوق والعلوم السياسية، جامعة مولود معمري، تيزي وزو، السنة الجامعية 2011/2010، ص 88.

[24] Bribery is understood here in its broadest sense to include a sum of money or a benefit from any other form, such as a gift, a job position, and so on.

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by violating the contractual obligations of the latter[25], which causes confusion in the project, whether these workers are technicians or Executives or those who have authority that gives him the right to view the information held by the industrial project, and obtaining trade secrets by this means represents severe harm to the project, and he must be entitled to seek compensation in addition to all other penalties.[26]

This issue was raised in the case (United States .v. HSU), and the defendants in this case were accused of attempting to steal one of the trade secrets related to the formula and method of manufacturing the drug (Taxoi) by bribery, which is a drug that fights cancer, manufactured by (Bristol) Meyer's (Squitb) in a secret way, and the defendants in this case fell into a deceptive trap set for them by the American FBI, while one of the experts working in this company presented documents containing information about the aforementioned drug to the defendants after they offered him a bribe of 400 thousand dollars, in addition to Other financial benefits, and these documents were prepared by (Bristol Meyer's) company to trap the accused, and their data were modified to hide confidential data related to the composition and manufacture of the drug, and the expert who was offered the bribe was an agent of the American intelligence.[27]

The Algerian legislator prohibited temptation with the aim of obtaining a trade secret. Article 27, fourth paragraph of Law No. 04/02 related to the rules applicable to commercial practices, stipulated that: “It is an unfair practice to seduce employees who contract with a competing economic agent contrary to the legislation related to work.” That the Algerian legislator criminalizes the temptation that is by the competitor only, so if the temptation was from another party outside the competitive relationship, this article cannot be applied.

Fourth - Other cases of disclosure of trade secrets

There are other cases of disclosure, including obtaining confidential information from places where it is kept in fraudulent ways, such as espionage, which is usually an approved step to allocate confidential information to others with those who have relationships with the owner of the secret in fraudulent intent to compel them to be complicit, or through eavesdropping devices, taking pictures, or by other means. Illegal remote access to files and computer databases, [28]in this case could be between the partners or the employer and the employee, as a former employee could become a competitor to the employer after establishing his own company in the same sector.

There is no doubt that the use of methods that result in obtaining information unlawfully or stealing confidential information from offices inside the facility or espionage or recording information without the knowledge or confidentiality of technicians or instigating them for the

[25] Disposition types sur la protection contre la concurrence déloyale, op cit, p 52.
[26]ذكرى عبد الرازق محمد، حماية المعلومات السرية من حقوق الملكية الفكرية في ضوء التطورات التشريعية والقضائية، دار الجامعة الجديدة، الأزاريطة، 2007، ص 153.
[27]حسام الدين الصغير، حماية المعلومات غير المفصح عنها والتحديات التي تواجه الصناعات الدوائية في الدول النامية، المرجع السابق، ص 95.
[28] Dispositions types sur la protection contre la concurrence déloyale, op cit, p52.

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purpose of obtaining it or inciting the disclosure of information by workers whose knowledge of this information reaches by virtue of Their job is to obtain confidential information from places where it is kept illegally or through fraudulent methods, or to impersonate an official authority that has the right to monitor and inspect the project ,[29] Whether this leak of information was in return for his interest or not.

Conclusion:

Article 39 TRIPs reunites American definitions of trade secrets and the European concepts of unfair competition and honest commercial practices. It is the first multilateral provision on confidential information, and it is a good starting point for case law in countries where the legal protection of trade secrets is not yet firmly established.

A uniform definition of trade secrets should be adopted, providing clear elements to identify what type of information qualify for trade secrets protection. Stakeholders suggest that commercial secrets should not be given lower priority than technical or other confidential information. Finding the right balance and avoiding excessively widening the scope of protection is critical to prevent undesirable conflicts with competition law rules The definition under Article 39.2 of the TRIPS is - more or less officially and to different extents - recognized in all EU jurisdictions. It is the obvious starting point to be considered, looking at the experience of countries that have a dedicated law on trade secrets.

Accordingly, we note that the Algerian legislator did not regulate it by a special law, as some comparative legislation did, such as the Jordanian law, for example, although trade secrets occupy an important place in the TRIPS Agreement, which requires countries wishing to join to go along with its provisions, as well as a matter that will raise many legal problems.

In the light of what has been stated above, and as an answer to the problem raised in this matter, it can be said that the laws established by the Algerian legislator do not guarantee complete and comprehensive protection.

Based on what has been reached, we propose a number of suggestions:

Organizing trade secrets in a law of its own, like other industrial property rights.

Amending Law 04/02 on the rules applicable to commercial practices to include clear provisions on trade secrets

Amending the Algerian legislator to the term professional secrets and replacing it with commercial secrets or information that should not be disclosed in order to remain secret with commercial value and competitive advantage.

[29] Reasonable steps to protect trade secrets: leading practices in an evolving legal landscape, centre for responsible enterprise and trade, 2015,p 1.

Journal OF LEGAL STUDIES - International Academic and Scientific Review published semi-annually by the Laboratory of Sovereignty and Globalization - Yahia FARES University of MEDEA
ISSN 2437-0304
EISSN: 2602-5108
Dépôt légal: 2015-3039
Volume: 12 **Number: 01** **Year : JAN 2026** **P :422-434**

REFERENCES

First/Foreign language references

-François Dessemontet, Protection of Trade Secrets and Confidential Information, n CM Correa and AA Yusuf (eds), Intellectual Property and International Trade: The TRIPS Agreement (2nd edn Wolters Kluwer Alphen aan den Rijn 2008) 270, 281 believes that 'the false or misleading bit of information may be protected as well as the true, "authentic" information' and cites Swiss case law in agreement. However, he also refers the clean hands doctrine 'which means that the owner of untrue or misleading information will very often not be deserving of any protection' (ibid, 281).

-Restatement First of Torts, section 757, Cmh, (1939).
-Article 07, the eighth paragraph of Law No. 90/11 related to labor relations, dated April 21, 1990
-MODULE 04, Trade secrets, WIPO publications, p 05, Posted on the site : www.wipo.int
-Nuno Sousa e Silva, What exactly is a trade secret under theproposed directive?, Journal of Intellectual Property Law & Practice, 2014, Vol. 9, No. 11 ARTICLE, P 928.
-Order No. 66/156 containing the Penal Code of June 8, 1966, amended and supplemented by Law No. 02/16 of June 19, 2016, J.R. No. 37.
-Le code pénal français, derniere modification le 16 Décembre 2017 , document généré le 12 janvier 2018 , copyright Legifrance.
-Disposition types sur la protection contre la concurrence déloyale articles et notes présente par le bureau d'L'OMPI, Genève, 1996, p 52..
-Order No. 06/03 containing the general organic law of the civil service, dated July 15, 2006, Jr No. 36, dated July 16, 2006.
-Article 55 of the 1996 Constitution of the People's Democratic Republic of Algeria, J.R. No. 76, dated December 08, 1996.
-Bribery is understood here in its broadest sense to include a sum of money or a benefit from any other form, such as a gift, a job position, and so on.
-Reasonable steps to protect trade secrets: leading practices in an evolving legal landscape, centre for responsible enterprise and trade, 2015.
-JAKE FRANKENFIELD, Trade Secret: Definition, Examples, Laws, Vs. Patent , 22 Dec 2022.

Second/ Foreign language references

-أحمد علي الخصاونة، الأحكام القانونية للمنافسة غير المشروعة والأسرار التجارية فى القانون الأردني،منشورات وائل، الطبعة الأولى ، 2015..

-ادريس فاضلي ، الملكية الصناعية في القانون الجزائري، ديوان المطبوعات الجامعية ، د ط ، 2013، الجزائر.

-حسام الدين عبد الغني الصغير، حماية المعلومات غير المفصح عنها والتحديات التي تواجه الصناعات الدوائية في الدول النامية، دار الفكر الجامعي، الإسكندرية، الطبعة الأولى، 2003.
-حسام عيسى، نقل التكنولوجيا، دراسة في الآليات القانونية للتبعية الدولية، المستقبل العربي، القاهرة، د ط، 1987.

Journal OF LEGAL STUDIES - International Academic and Scientific Review published semi-annually by the Laboratory of Sovereignty and Globalization - Yahia FARES University of MEDEA
ISSN 2437-0304
EISSN: 2602-5108
Dépôt légal: 2015-3039

Volume: 12	**Number: 01**	**Year : JAN 2026**	**P :422-434**

-ذكرى عبد الرازق محمد، حماية المعلومات السرية من حقوق الملكية الفكرية في ضوء التطورات التشريعية والقضائية، دار الجامعة الجديدة، الأزاريطة، 2007.
-سميحة القليوبي، الملكية الصناعية، دار النهضة العربية للنشر والتوزيع، القاهرة، الطبعة الخامسة، 2005.
-عمر كامل السواعدة، الأساس القانوني لحماية الأسرار التجارية، دراسة مقارنة دار حامد للنشر و التوزيع، الطبعة الأولى، 2009.
-ندوة الويبو الوطنية عن الملكية الفكرية المنظمة من قبل المنظمة العالمية للملكية الفكرية (الويبو) بالتعاون مع جامعة القاهرة، جمهورية مصر العربية، (من 17 إلى 19) شباط 2003.
-زوبير أرزقي، حماية المستهلك في ظل المنافسة الحرة، مذكرة لنيل شهادة الماجستير في القانون، فرع المسؤولية المهنية، الحقوق والعلوم السياسية، جامعة مولود معمري، تيزي وزو، السنة الجامعية 2011/2010.