ADDIS ABABA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE STUDIES

SCHOOL OF LAW

PROTECTION OF TRADE SECRETS IN ETHIOPIA: THE NEED FOR COMPREHENSIVE LEGAL FRAMEWORK

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE MASTER OF LAWS DEGREE (LL.M.) IN BUSINESS LAW

BY: - DAME OLJIRA

ADVISOR: - BIRUK HAILE (PhD)

DECEMBER, 2025

ADDIS ABABA, ETHIOPIA

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Declaration

I hereby declare that this thesis is my original work, and to the best of my knowledge, no part or whole of this thesis has been previously submitted for a degree at this or any other university, and that the sources used have been duly acknowledged.

Name: - Dame Oljira

Date: -

Signature _________________

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Acronyms

CNRPP	Copyright and Neighboring Rights Protection Proclamation No. 410/ 2004
COMESA	Common Market for Eastern and Southern Africa
DTSA	Defend Trade Secrets Act
EEA	Economic Espionage Act
EIPO	Ethiopian Intellectual Property Office
EU	European Union
EUIPO	European Union Intellectual Office
FDI	Foreign Direct Investment
FDRE	Federal Democratic Republic of Ethiopia
IP	Intellectual Property
IPRs	Intellectual Property Rights
NDAs	Non-Disclosure Agreements
OECD	Organization for Economic Cooperation and Development
TCCPP	Trade competition and consumer Protection Proclamation No.813/2013
TRIPs	Trade-Related Aspects of Intellectual Property Rights
TRPP	Trade Mark Registration and Protection Proclamation No.501/2006
USITC	U.S. International Trade Commission
UTSA	Uniform Trade Secrets Act
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Abstract

This study examines the adequacy of trade secret protection in Ethiopia. General legal principles derived from Trade Competition and Consumer Protection Proclamation No. 813/2013, the Ethiopian criminal code, Ethiopian tort law, contract law, labour law and commercial law, may be used to protect trade secrets; however, the scattered or fragmented provisions contained under these laws are not full-fledged. In this regard, the most common forms of trade secret misappropriation, such as breaches of confidential obligations and third-party misappropriations, have not been effectively addressed. Available civil and criminal remedies are inadequate for redressing the proper relief of trade secret owners. Furthermore, the existing legal regime lacks evidence gathering and preservation rules applicable to secret trade litigation. Additionally, there are no established protective measures to ensure confidentiality of trade secrets during court proceedings. Finally, the existing legal regime does not provide test data protection for pharmaceutical products and agricultural chemicals. This study employs a doctoral research methodology. This study finds that Ethiopia does not have a comprehensive law that regulates trade secrets. Based on these findings, the researcher recommends that Ethiopia enact a comprehensive standalone law.

CHAPTER 1

INTRODUCTION

1.1. Background of the Study

The success of any business relies on its ability to obtain and maintain a competitive advantage in the marketplace.[1] “Trade secrets are the lifeblood of many companies”[2] and the most important assets for companies to survive in a competitive market. Strong protection and effective enforcement of trade secrets are essential for a firm’s ability to innovate, grow, and invest.[3] Further, robust protection of trade secrets may also play a role in the international diffusion of technologies through foreign direct investment and trade.[4]

The protection of trade secrets can be traced back to the Roman Empire.[5] Modern trade secret law was rooted in Anglo- American jurisprudence or common law doctrine in the nineteenth century.[6] The doctrine of trade secrets emerged from a collection of common law torts including violations of confidence and confidential relationships, misappropriation, unfair competitive practices, unjust enrichment, and torts associated with trespassing. [7]

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[1] David W. Slaby, James C. Chapman and Gregory P. O’Hara, ‘Trade Secret Protection: An Analysis of the Concept Efforts Reasonable Under the Circumstances to Maintain Secrecy’ (1989) 5 Santa Clara High Technology Law Journal 321

[2] Jayme A. Sy Jr. & Jason L. Sy, 'Discovery of Trade Secrets: A Procedural Quagmire' (2018) 62 Ateneo Law journal 1218

[3] Darshana Sumanadasa, *Emerging and Enduring Issues of trade secrecy – A Sri Lankan perspective* vol 8 (2) (WIPO- WTO Colloquium papers, Asian edition 2017) 116

[4] Lippoldt D. and M. Schultz , ‘Uncovering trade secrets- An Empirical Assessment of Economic Implication of Protection for Undisclosed Data’ OECD Trade Policy Papers 167,(OECD publishing 2014) <http://dx.doi.org/10.1787/5jxzl5w3j3s6-en > accessed December 2023

[5] A. Arthur Schiller, ‘Trade *Secrets and the Roman law :The* Actio Servi Corrupti’ (1930) 30 Columbia. Law review 837

[6] Mark A. Lemley, ‘The Surprising Virtues of Treating Trade Secrets as IP Rights’ (2008) 61 Stanford Law Review 311

[7]Ibid

In 1994, the TRIPS Agreement recognized trade secrets as intellectual property rights. Following the adoption of the TRIPS Agreement in 1994, trade secrets gained massive attention. The importance of trade secrets as intellectual property protection mechanisms has become increasingly evident over the past two decades.[8]

When compared to patents, trade secrets protect a broader scope of information, have a longer lifespan, and do not require registration, making them an attractive IP assets for business enterprises and especially favorable and often the sole feasible choice for small and medium-sized enterprises with limited financial capacity.[9]

Empirical studies have revealed that large and small- and medium-sized enterprises engaged in different industry sectors prefer trade secrets to other types of IP protection.[10] In 2014, the U.S. International Trade Commission (USITC) surveyed more than 7,000 U.S internationally engaged firms on the economic effects of India's trade and industrial policies on their business operations. The research findings indicate that 56% of the companies deemed trade secrets crucial, surpassing the significance attributed to other forms of intellectual property.[11] Trademarks were valued as very important by 48 percent of firms, whereas patents and copyrights were considered crucial by 37 percent and 31 percent of businesses, respectively.[12] Similarly, the USITC surveyed 5,000 U.S. firms regarding their IP experiences in China, and firms listed stolen trade secrets as their top IP concern.[13]

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[8] Nicola Searle, *The Economic and Innovation Impacts of Trade Secrets (UK intellectual property office publishing* 2021)

[9] David S Levine, and Ted M Sichelman 'why do start-ups use trade secrets?' (2018) 94 Notre Dame Law Review 751

[10] Linton Katherine, 'The Importance of Trade Secrets: New Directions in International Trade Policy Making and Empirical Research' (2016) Journal of International Commerce and Economics <https://www.usitc.gov/publications/332/journals/katherine_linton_importance_of_trade_secrets_0.pdf.>accessed April 2022

[11] Ibid

[12] Ibid

[13] ibid

The same experience has been demonstrated in the EU, according to a survey conducted by the European Union Intellectual Office (EUIPO) and the European Observatory on Infringements of Intellectual Property Rights. The study revealed that 52.3% of the firms surveyed preferred trade secrets, whereas patents were rated by only 31.7%.[14]

The increased importance of trade secrets, coupled with the increased risk of misappropriation, has pushed countries to change their policies concerning trade secrets. The EU adopted the Directive on Trade Secrets in June 2016, the US adopted the Defend Trade Secret act in May 2016, Japan amended the Unfair Competition Prevention Act in February 2018, and China amended the Unfair Competition Law in January 2018.

Ethiopia is the least developed country, in which FDI and technology are paramount to its economy. Robust trade secret protection may stimulate foreign investment and encourage technology transfer.[15] Further, the protection of trade secrets widens the sphere of domestic IPR protection and creates alternatives for domestic industries to choose their favorable modes of IP protection. Trade secret protection can serve as a substitute to patent for domestic industries that cannot afford patent protection. A patent protects only patentable information (invention), whereas trade secrets are broad enough to protect patentable information or invention and non-patentable information or commercial information.[16]

In Ethiopia, most economic activities are carried out by micro, small and medium-sized enterprises (MSMEs).[17] Compared to larger firms, small- and medium-sized businesses depend

[14] Rembert Niebel, Lorenzo de Martinis and Birgit Clark, 'The EU Trade Secrets Directive: all change for trade secret protection in Europe?' (2018) 13 Journal of Intellectual Property Law & Practice 445

[15] Douglas .and Schultz (n 4)

See also Michael A Klein, 'Patents, Trade Secrets and International Technology Transfer' (2021) 210 Economics Letters 110180

[16]Michael R. Mcgurk and Jia W. LU, 'The Intersection of Patents and Trade Secrets' (2015) 7 Hastings science and technology law journal 189

[17] Tadesse Wudu Abate and Henok Ezezew Sheferaw, 'Micro, Small and Medium Enterprises and Their Linkage with Key Actors in Ethiopia: Developing Entrepreneurial Ecosystem Mapping' (2023) 12(1) Journal of Innovation and Entrepreneurship 1

on trade secrets because the protection of trade secrets is extremely beneficial to them, as they may not have the financial capacity to patent their innovations. Trade secrets do not require registration as a prerequisite for establishing protection and this allows trade secret protection to be cheaper and faster, making them the favorable and often the sole feasible choice for small and medium-sized enterprises with limited financial capacity.[18] As of December 2021, only 12 (twelve) domestic companies registered their patents in Ethiopia.[19]

Ethiopia joined the World Intellectual Property Organization in 1998, acquired observer status in the WTO in 1997, and started the accession process in 2003 as well as ratified the Paris Convention on November 5, 2024. To protect IP rights, Ethiopia has adopted the Inventions, Minor Inventions, and Industrial Designs Proclamation No. 123/1995; the Copyright and Neighboring Rights Proclamation No. 410/2004 and its amendment Proclamation No.872/2014; and Trademark Registration and Protection Proclamation No. 501/2006. Unlike patents, trademarks, and copyrights, Ethiopia has no specific law designed to protect trade secrets.

1.2. Statement of the Problems

Trade secrets are essential assets for commercial entities to operate successfully in competitive markets. The misappropriation of trade secrets can cause irreparable damage to owners and threaten the survival of their businesses. Unlike other forms of IP, infringement or disclosure of a trade secret entails the loss of the secret forever.

In Ethiopia, there is no specific legislation on the protection of trade secrets; however, Trade Competition and Consumer Protection Proclamation No.813/2013, the Ethiopian criminal code, Ethiopian tort, contract, labour, and commercial laws contain general provisions that may have been used to protect trade secrets. Nevertheless, such fragmented legal regimes do not provide adequate protection.

Concerning the scope of application, Trade Competition and Consumer Protection Proclamation No. 813/2013 mainly govern the relationship between competitors. Trade secret protection

[18] Michael R. Mcgurk and Jia W. LU, ‘The Intersection of Patents and Trade Secrets’ (2015) 7 Hastings science and technology law journal 189

[19] Ethiopian Iintellectual property Authority Archive, ‘Patent related data 1996 - 2021’, (hard copy)

extends beyond the relationships between competitors. In addition to competitors, employees, business partners, and third parties may also misappropriate trade secrets. The TRIPS Agreement broadly elaborates unfair commercial practices related to trade secrets misuse as a breach of contract, breach of confidence, and inducement to breach, and includes the acquisition of undisclosed information by third parties.[20] Nevertheless, Article 8(2) (b) and (f) of the proclamation only provides misappropriation by competitors as an infringement of trade secrets, and it does not sanction a breach of confidential obligation and third-party misappropriation. Thus, these protections are applicable solely to competitors and do not extend to employees, business partners, or third parties who misappropriate trade secrets through breaches of confidentiality, theft, bribery, hacking, espionage, or other improper means.

Further, there is no adequate redress under Proclamation No.813/2013 concerning trade secret misappropriation. The Plaintiff's actual loss, the defendant's unjust enrichment, and reasonable royalty are three acceptable methods for calculating damages in trade secret misappropriation cases. Nevertheless, Proclamation No. 813/2013 does not incorporate a damage assessment method applicable to trade secret cases; rather, it simply refers to relevant laws. Compensation decided in accordance with tort law is insufficient to ensure proper relief of trade secret owners' claims. Ethiopian tort law provides only a general compensatory framework and lacks specific rules regarding trade secrets. Ethiopia's tort law primarily addresses tangible harms and has not adapted to address modern knowledge-based assets, such as trade secrets. Ethiopian tort law relies exclusively on actual, provable loss and does not provide modern mechanisms tailored to trade secrets, such as the defendant's unjust enrichment or reasonable royalty as alternative methods for calculating damages. Moreover, trade secrets are inherently fragile because their confidentiality is permanently lost once they are revealed. Ordinary compensatory damages may not always be adequate to deter misappropriation or infringement. The misappropriation of trade secrets frequently involves intentional wrongdoing, making deterrent measures, such as punitive or exemplary damages, crucial. However, Ethiopian tort law only recognizes compensatory damages and does not recognize punitive or exemplary damages. In addition, Proclamation No.

[20] Agreement on Trade related aspects of intellectual property rights 1994 (TRIPS 1994), art 39.

813/2013 does not expressly provide other civil remedies such as preliminary or permanent injunction, recall and destruction of infringing products, and delivery up or seizure.

Furthermore, adopting evidence gathering and preservation rules applicable to trade secret litigation is a touchstone for trade secret protection. Unlike other forms of intellectual property, trade secrets are not registered with the government authority; rather, they contain confidential and hidden information. Due to the confidential nature of trade secrets, obtaining proof or collecting evidence of misappropriation is an inherent challenge for owners.[21] Many trade secret infringement applications have been rejected because of difficulties related to evidence collection.[22] Nevertheless, Proclamation No. 813/2013 does not incorporate the evidence gathering and preservation rules as well as the prima facie evidence or burden of proof easing rules. Evidence gathering and preservation rules include ex parte emergency search to preserve and obtain proof (Anton Piller), pre-trial discovery, and the prima facie evidence rule. The availability of these procedures are crucial to gather and preserve evidence from destruction or concealment as well as ease burden of proof associated with the peculiarity of trade secrets.

Bringing a lawsuit to court may expose trade secrets to the risk of losing confidentiality. Providing protective measures that mitigate the risk of trade secret disclosure during litigation is a touchstone of trade secret enforcement. Nevertheless, Proclamation No. 813/2013 does not incorporate protective measures that ensure the confidentiality of trade secrets during court proceedings.

The ever-increasing tendency toward trade secret misappropriation requires criminal punishment, which has a potential deterrence effect. Infringement of trade secrets may cause irreparable damage to the owner because infringement of trade secrets would entail a loss of secret forever. Civil remedy is far from sufficient to compensate for the owner's loss, and criminal prosecution is necessary to deter and punish the misappropriation of a trade secret to supplement civil

[21] WIPO guide to trade secrets and innovation < https://www.wipo.int/web-publications/wipo-guide-to-trade-secrets-and-innovation/en/part-iii-basics-of-trade-secret-protection.html > accessed November 2023

[22] Interview with Ato Natinael Teferi, prosecuting officer at the Ministry of Trade and Regional Integration anti-competitive prevention division (Addis Ababa, Ethiopia, October 11, 2024)

remedies. Nevertheless, with respect to trade secret misuse, the Ethiopian criminal code does not sanction third-party misappropriations. In addition, the punishment imposed under the Ethiopian Criminal Code with respect to a breach of confidentiality obligation and unfair competition is inadequate.

General legal principles derived from tort, contract, and commercial laws may be employed to protect trade secrets. However, the protection offered by these legal frameworks is limited in terms of scope and application. Article 2028 of the Ethiopian tort law provides a broad provision applicable to a wide range of offenses. However, in the absence of a definition of trade secrets and a specific provision articulating offenses related to trade secrets, it is not possible to draw definitive conclusions regarding the precise applicability of Article 2028 of Ethiopian tort law to trade secret misuse. Moreover, a non-disclosure agreement is enforceable under Ethiopian contract law, particularly under Article 1712 (1) of the Ethiopian Civil Code. However, contract law provides protection only if confidentiality obligations exist in the contract, and it is only effective against parties that have contractual relationships with the trade secret owner; it does not prevent a third party from using or disclosing trade secrets. Additionally, Article 44(3) of the Ethiopian Commercial Code prohibits commercial agents from using or disclosing any confidential information disclosed to them by the principal or learned while carrying out agency duties. This provision helps in specific contexts (commercial agencies) but may not cover general protections encompassing different parties that are involved in the multiple commercial transactions.

The protection of trade secrets obligates not only individuals but also governmental or regulatory authorities to safeguard test data submitted for marketing approval. Protecting test data in pharmaceutical products and agricultural chemicals is important for balancing innovation with public health and environmental safety. In the absence of such protection, competitors may copy the test data rather than conducting their own trials, thereby gaining an undue advantage. This practice discourages original innovation and leads to market distortion. The Ethiopian Food and Medicine Administration Proclamation No.1112/2019 established a legal framework for regulating food, medicines, cosmetics, medical devices, and tobacco products. Similarly, the Ethiopian Pesticide Registration and Control Proclamation No. 674/2010 provides a legal framework for the manufacture, import, distribution, sale, use, disposal, and control of pesticides in Ethiopia. Under both proclamations to obtain marketing approval, manufacturers of pharmaceutical products and agricultural chemicals must submit data proving the safety, efficacy, and quality of the products to the regulatory authorities. However, neither proclamation addresses the issue of test data protection, as there is no provision ensuring protection against unfair commercial use or disclosure.

1.3. Research Questions

This research addresses the general question: Do Trade Competition and Consumer Protection Proclamation No.813/ 2013, Ethiopian criminal code, and other relevant legislation adequately regulate trade secrets?

This research also addresses the following specific questions:

- Does Ethiopian Trade Competition and Consumer Protection Proclamation No.813/ 2013 sanction a breach of confidentiality obligation and third-party misappropriation?
- Are the remedies available under Trade Competition and Consumer Protection Proclamation No.813/ 2013 adequate to provide effective redress for trade secret misappropriations?
- Does Trade Competition and Consumer Protection Proclamation No.813/ 2013 incorporate evidence gathering and preservation rules applicable to trade secret litigation?
- Does Trade Competition and Consumer Protection Proclamation No.813/ 2013 incorporate protective measures to ensure confidentiality of trade secrets during court proceedings?
- Does the Ethiopian criminal code sanction third-party misappropriation?
- Is the punishment available under the Ethiopian criminal code with respect to a breach of confidentiality obligations and unfair competition adequate to provide effective remedy for trade secret misappropriations?
- What are the implications of Ethiopian tort, contract, and commercial laws on the protection of trade secrets?
- Do Ethiopian Food and Medicine Administration Proclamation No.1112/2019 and Ethiopian Pesticide Registration and Control Proclamation No. 674/2010 provide test data protection for pharmaceutical products and agricultural chemicals, respectively?

1.4. Objectives of the Study

The general objective of this study is to examine the protection of trade secrets in Ethiopia. This study also had the following specific-objectives.

- To study whether a breach of confidentiality obligation and third-party misappropriation are sanctioned under Ethiopian Trade Competition and Consumer Proclamation No. 813/ 2013.
- To examine the adequacy of the remedies available for trade secret misappropriation under Ethiopian Trade Competition and Consumer Protection Proclamation No.813/ 2013.
- To examine the availability of evidence gathering and preservation rules applicable to trade secret litigation under Ethiopian Trade Competition and Consumer Protection Proclamation No. 813/ 2013.
- To examine the availability of protective measures that ensure the confidentiality of trade secret during court proceedings under Ethiopian trade competition and consumer Protection Proclamation No 813/2013.
- To study whether third-party misappropriation was sanctioned under the Ethiopian Criminal Code.
- To examine the adequacy of criminal punishment provided under the Ethiopian criminal code with respect to a breach of confidentiality obligation and unfair competition.
- To examine the implications of Ethiopian tort, contract, and commercial laws on trade secret protection.
- To study whether Ethiopian Food and Medicine Administration Proclamation No.1112/2019 and Ethiopian Pesticide Registration and Control Proclamation No. 674/2010 provide test data protection for pharmaceutical products and agricultural chemicals respectively.

1.5. Literature Review

Several studies have been conducted on the protection of trade secrets in different jurisdictions. The OECD published a two-phase project examining trade secret legal regimes across diverse sample countries and their economic implications. The Phase I project (OECD Trade Policy

Paper No.162) examined the national legal regimes of diverse sample countries, including BRICS member countries, five other partner countries, and eleven OECD member countries[23]. This study develops an indicator called the Trade Secrets Protection Index that measures the stringency of the protection of trade secrets.

The Trade Secrets Protection Index contains five elements: (1) definitions and coverage; (2) specific duties and misappropriation; (3) remedies and restrictions on liability; (4) enforcement, investigation and discovery, and test data exclusivity; and (5) system functioning and related regulation. The study finds that the sample countries had some commonalities regarding definition and scope; differences exist in evidence gathering and discovery, protection of trade secrets during litigation, technology transfer requirements, and the effectiveness of legal systems with respect to enforcement.

The Phase II project (OECD Trade Policy Paper No.167) examined the stringency of trade secret protection and its economic implications across diverse samples of 37 countries.[24] This study shows a positive correlation between effective trade secret protection and innovation as well as international economic flows of investment and trade. This study also indicates that the protection of trade secrets may have a positive connection with advancements in domestic innovation, international transfer of technology, and availability of technology-intensive products[25].Nevertheless, this study did not include Ethiopia in its sample and did not examine trade secret protection in the context of Ethiopian legal systems.

In Ethiopia, there is few literature concerning the protection of trade secrets, and the issue of trade secret protection has received limited academic attention compared to other forms of intellectual property. Aliyi Kedir's thesis titled "The Legal Protection of Trade Secrets in Ethiopia'' analyses Ethiopia's existing trade secret law in light with Article 39 of the TRIPS

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[23] Schultz, M. and D. Lippoldt, 'Approaches to Protection of Undisclosed Information (Trade Secrets): Background Paper' *OECD Trade Policy Papers* No. 162 (OECD Publishing 2014) http://dx.doi.org/10.1787/5jz9z43w0jnw-en accessed December 2023

[24] Douglas and Schultz (n 4)

[25] Ibid

Agreement[26]. The study finds that Ethiopia's existing trade secret law does not comply with the minimum standards provided under the TRIPS Agreement.

Aliyi Kedir does not address issues related to test data protection. Under TRIPS Agreement Article 39(3), "test data" refers to data submitted to regulatory authorities in the pharmaceutical or agricultural sectors to obtain marketing approval for new products. Article 39 (3) of the TRIPS Agreement obliges member states to protect test data against unfair commercial use or disclosure. The protection of test data is one of the elements of the Trade Secrets Protection Index mentioned in OECD Trade Policy Paper No.162. Aliyi Kedir does not examine how Ethiopia protects or fails to protect test data from unfair commercial use or disclosure. However, this thesis addresses Ethiopia's legal framework for pharmaceutical and agricultural test data. Addressing this gap is essential to provide a comprehensive understanding of how Ethiopia's legal framework safeguards test data against unfair commercial use and its disclosure. Moreover, Aliyi Kedir primarily describes the available remedies, but does not analyze their effectiveness. Additionally, it does not analyze the gaps associated with damage assessment. However, this thesis examines the effectiveness of remedies and the gaps related to damage assessment in depth, incorporating court case analysis in addition to legal analysis.

Some other researchers have slightly discussed the topic within the domain of their respective main topics. Gizachew Girma's LL.M. thesis titled 'Protection of Traditional Knowledge under International and Ethiopian Law with a Particular Reference to Traditional Medical Knowledge: Current Trends, Prospects, and Challenges' points out the absence of comprehensive or specific law designed to protect trade secrets in Ethiopia.[27] He also indicated that trade practice and consumers protection proclamation have some provisions relevant to trade secret protection.

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[26] Aliyi Kedir, 'The Legal Protection of Trade Secrets in Ethiopia' (LL.M thesis, Haramaya University,2017)< https://etelsa.org/pages/thesis_view.php?guid=16c05caa-3cc6-11ed-8a53-0a0027000027&school_guid=23a84c4d-3cb9-11ed-8a53-0a0027000027> accessed October, 2025

[27]Gizachew Girma,' Protection of Traditional Knowledge under International and Ethiopian Law with a Particular Referenceto Traditional Medical Knowledge: Current Trends, Prospects, and Challenges' (LL.M thesis, Addis Ababa University 2011) <http://etd.aau.edu.et/bitstream/handle/123456789/17507/Gizachew%20Girma.PDF?sequence=1&isAllowed=y >accessed December 2021

Similarly, Yohannes Hailu, in his LL.M thesis titled 'Legal and Institutional Framework for Transfer of Technology in Ethiopia' indicated the lack of specific and effective laws designed to protect Ethiopia's trade secrets.[28] However, he points out the existence of scattered provisions under Trade Competition and consumer proclamation No. 813/2013, Ethiopian Commercial Code, and Civil Code. Moreover, he argues that 'The existence of strong trade secret protection laws protects technology developers and entrepreneurs as well as gives confidence to foreign investors to transfer certain technologies to domestic counterparts'. Rediet Yilma, in his LL.M. thesis titled 'Regulation of Franchise Agreement in Ethiopia', indicated the absence of consolidated trade secrets law in Ethiopia.[29] He further argued that the absence of effective protection of trade secrets in Ethiopia required signing Non- disclosure agreements to fill the gaps.

Gizachew Girma, Yohannes Hailu and Rediet Yilma have discussed the protection of trade secrets in Ethiopia a narrow subtopic consisting of one to three pages. They were not involved in a full-fledged study of the topic. Moreover, apart from indicating the absence of comprehensive and effective trade secret law in Ethiopia, they did not mention or examine gaps in the existing legislation. The main theme of this thesis is to examine the protection of trade secrets in Ethiopia and scrutinize the gaps in the existing legislation in depth.

1.6. The Methodology of the Study

This study is doctrinal in nature and aims to analyze legal documents. Both primary and secondary data were used in this study. Statutes were used as primary data sources. The statute consists of Ethiopia's domestic laws, the laws of some selected countries, Paris Convention, the TRIPS Agreement, COMESA Competition Regulations (2004), and COMESA Competition Rules (2004). Ethiopian trade competition and consumer protection proclamation No.813/2013,

[28]Yohannes Hailu, 'Legal and Institutional Framework for Transfer of Technology in Ethiopia' (LL.M thesis, Addis Ababa University 2015) <http://etd.aau.edu.et/bitstream/handle/123456789/16750/Yohannes%20Hailu.pdf?sequence=1&isAllowed=y >accessed November 2021

[29] Rediet Yilma, 'Regulation of Franchise Agreement in Ethiopia' (LL.M thesis, Addis Ababa University 2020)http://etd.aau.edu.et/bitstream/handle/123456789/25988/Rediet%20Yilma.pdf?sequence=1&isAllowed=y> accessed December 2021

Ethiopian criminal code, Ethiopian tort law, contract law, commercial law, labor law, and federal tax administration proclamation No. 983/2016 were analyzed. Regarding test data protection in the context of pharmaceutical products and agricultural chemicals, Ethiopian Food and Medicine Administration Proclamation No.1112/2019, and Ethiopian Pesticide Registration and Control Proclamation No. 674/2010 were analyzed. To compare trade secrets and other IPR in some aspects of protection, the Ethiopian Copyright and Neighboring Rights Protection Proclamation No. 410/2004 and Ethiopian Trade Mark Registration and Protection Proclamation No. 501/2006 were scrutinized.

The experiences of the USA and Uganda were also examined. The USA was chosen because it has a comprehensive and strongest statutory and best-developed common law for the protection of trade secrets. On the other hand, Uganda was selected because it has specific and best-developed bodies of trade secret law, and its economic development status is more or less equivalent to that of Ethiopia.

To supplement legal analysis and gather first-hand information concerning practical challenges, interviews were conducted with Ato Kidane Tsageye, judge at the Trade Competition and Consumer Protection Administrative Court; Ato Natinael Teferi, prosecuting officer at the Ministry of Trade and Regional Integration anti-competitive prevention division (desk); and Ato Ephrem Hailu, general manager at the EMECCE Engineering and Agro-Industry Private Limited Company.

Finally, secondary data sources such as books, articles, research papers, statistical data, and magazine reporting were used in the course of this study.

1.7. Organization of the Study

This thesis is divided into four chapters. Chapter 1 is an introductory section that provides general insights into this study. Chapter 2 provides a general overview of trade secrets and the experiences of some jurisdictions. Chapter 3 addresses the protection of trade secrets in Ethiopia. It examines laws relating to the protection of trade secrets under Ethiopia’s legal regime. Chapter 4 is the final chapter, comprising conclusions and recommendations.

CHAPTER 2

OVERVIEW OF TRADE SECRETS AND EXPERIENCE OF SOME JURISDICTIONS

2.1 Definition and Nature of Trade Secrets

2.1.1 Definition

A trade secret is any confidential information that provides the owner with a competitive advantage.[30] 'A trade secret may consist of any formula, pattern, device, or compilation of information which is used in one's business, and that gives him an opportunity to obtain an advantage over competitors who do not know or use it'.[31] TRIPS agreement has provided as follows:

> Undisclosed information should be protected against being disclosed to, acquired by, or used by others without their owner's consent in a manner contrary to honest commercial practices, so long as such information:
>
> (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
>
> (b) has commercial value because it is secret; and
>
> (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.[32]

The TRIPS Agreement employs three elements to define trade secrets: secrecy, commercial value, and reasonable steps to maintain secrecy. 'Secrecy element does not require absolute confidentiality; owners may disclose the information to employees and business associates,

[30]WIPO < https://www.wipo.int/tradesecrets/en> accessed November 2023

[31] Restatement of Tort 1939, Section 757.

[32] TRIPS (n 20)

however, to maintain secrecy, the information must not be easily accessible to the public and should only be shared under conditions that preserve its confidentiality from the broader public.[33]

The commercial value requirement is determined in terms of the economic benefits gained from information because it is secret. The requirement for reasonable efforts is determined on a case-by-case basis.[34] Restricting access to information, limiting the number of people who know the information, executing a confidentiality agreement, including a confidentiality notice on the carrier of classified information, locking up the carrier of classified information, and adopting passwords or codes on classified information are some of the reasonable efforts that must be taken by the owner to maintain secrecy.[35]

2.1.2. The Nature of Trade Secrets

The nature or legal status of trade secrets is controversial in legal jurisprudence, and remains a subject of debate among scholars.[36] Four different theories, namely the property right theory, the contract-based relational theory, the unfair competition-based relational theory, and the personhood theory, emerged out of this contention.[37]

Property rights theory treats trade secrets as property rights. On the contrary, the contract-based relational theory portrays that trade secrets are based on contractual obligations, and “contract is the most convincing theory for protecting rights in trade secrets.” [38] Unfair competition-based relational theory argues that trade secret law represents a set of interdictions against unfair competition within the broader tort umbrella. The fourth theory, or personhood theory, argues that ‘[Trade secret law primarily in restitutionary terms, where trade secret deemed part of the

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[33] Douglas .and Schultz (n 23)

[34] Slaby, Chapman and O’Hara (n 1)

[35] Ibid

[36] Lemley (n 6)

[37] Charles T. Graves, ‘*Trade Secrets as Property: Theory and Consequences’* (2007) 15 Journal of Intellectual Property Law 39

[38] Ibid

personhood of the owner, something that others cannot freely appropriate without paying for their unjust enrichment'.[39]

These conceptual divergences result in the protection of trade secrets under various legal regimes. In different countries, trade secrets are regulated under diverse legal regimes, such as unfair competition law, industrial property law, penal law, labor law, and tort law. The USA is a prominent supporter of the property rights approach. The USA Supreme Court broadened the concept of property to encompass more than just land or tangible goods. This broadened concept includes creation and innovation resulting from an individual's labor. The Court also determines that violating trade secrets may entail compensation.[40] In the UK, the protection of trade secrets is based on the law of confidentiality or breach of confidence under a contract-based relational view.[41] In China, Germany, and Japan, trade secrets are protected under unfair competition legal regimes.

Scholars contend with the property-right approach that trade secrets do not provide exclusive rights against the world.[42] A TRIPS agreement recognizes trade secrets as IP rights. The incorporation of trade secrets under the TRIPS Agreement resolved the debate surrounding the property conception of trade secrets.[43]

2.2. Acts that Constitute Infringement under Trade Secrets Law

Unlike other intellectual property laws, trade secret laws prohibit misappropriation. The acquisition, use, and disclosure of trade secrets, contrary to honest commercial practices,

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[39] Ibid.

[40] Michael P. Simpson, 'The Future of Innovation: Trade Secrets, Property Rights, and Protectionism - an Age-Old' Tale (2005) 70 Brooklyn law Review 1121

[41] Miguel Deutch, '*The Property Concept of Trade Secrets in Anglo-American Law: An Ongoing Debate*' (1997) 31 University of Richmond Law Review 313

[42] Douglas .and Schultz (n 23)

[43]Surinder Kaur Verma, 'Protection of Trade Secrets under the Trips Agreement, and Developing Countries' (1998) The Journal of World Intellectual Property 723

constitute misappropriation.[44]Acquisition includes taking, copying, and memorizing; use includes actual use or threatened to use; and disclosure includes actual disclosure or threatened to disclose.[45] The core purpose of the trade secret law is to protect trade secrets from misappropriation. The acquisition, use, and disclosure of trade secrets through lawful means or honesty practices do not constitute misappropriation. Robert G. Bone explained the peculiarity of trade secrets as follows:

> Copyright law imposes liability for copying even when the copier is a stranger to the copyright owner and obtains work lawfully. Patent law also applies to strangers, imposing liability even when the defendant independently comes up with the same invention. In addition, trademark law holds strangers liable for perfectly innocent adoption of confusingly similar marks. The trade secret law is fundamentally different. It does not impose a liability for mere appropriation. Rather, the appropriator must have acquired, disclosed, or used the information wrongfully. [46]

Breach of duty and inducement to breach, as well as third parties' misappropriation, have been prohibited under the TRIPS Agreement. TRIPS provides that "undisclosed information should be protected against being disclosed to, acquired by, or used by others without their owner's consent in a manner contrary to honest commercial practices".[47] Footnote 10 of TRIPS Agreement broadly elaborates unfair commercial practices related to trade secrets misuse as a breach of contract, breach of confidence, and inducement to breach, and includes the acquisition of undisclosed information by third parties.

Breach of duty includes breach of contract and confidence. The owner of the trade secret may have signed a non-disclosure agreement and a non-compete agreement with employees and business partners. The breach of this contractual duty constitutes misappropriation. On the other hand, the duty of confidentiality can still arise without an agreement where parties have a

[44] Ibid

[45] JJ Leopold, 'Are Improper Acquisition or Threatened Misappropriation Enough for an Injunction under the Defend Trade Secrets Act?' (2023) 90 University of Chicago Law Review Online 1

[46] Robert G. Bone, 'A New Look at Trade Secret Law: Doctrine in Search of Justification' (1998) 86 California law review 243

[47] TRIPS 1994) (n 20)

fiduciary duty or duty of confidence.[48] Moreover, third parties could be held liable if they were aware of the confidential nature of the information or committed gross negligence in failing to know that the dishonest commercial practices were involved in obtaining such information.

2.2.1 Restrictions on Liability under Trade Secrets Law

Trade secret law does not provide a monopoly right to the owner. Acquiring information through reverse engineering, independent discovery, and other fair practices do not constitute a misappropriation.[49] Misappropriation of trade secrets, then, does not simply require the use of a trade secret but the acquisition, use, or disclosure of a secret in a way that runs afoul of the prohibitions of trade secret law. [50] It is not a violation of the trade secret law if a person acquires trade secrets through fair practice.

2.3. Specific Characteristics of the Trade Secret

The duration of an IP right is most essential feature and the clear preference for the owner.[51] Trade secrets have perpetual protection as long as secrecy is maintained. Trade secret protection has no time limits. Coca-Cola and telephone inventions are the best examples to explain trade secrets and patent protection lifespans. Alexander Graham Bell patented the telephone in 1876 and acquired the most valuable patent in history, whereas Dr. John Pemberton created Coca-Cola in 1886.[52] Telephone invention patent protection lapsed in 1897 after 20 years, whereas the Coca-Cola trade secret protection was still maintained.

Trade secrets do not grant exclusive rights. Trade secret protection is available only against unfair practices or misappropriation. It does not exclude fair practices, such as independent

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[48] Verman (n 43)

[49] Mark A Lemley, 'Why Do We Have Trade Secrets?' (2007) 11 Marquette Intellectual Property Law Review 1

See also Pamela Samuelson, 'The Law and Economics of Reverse Engineering' (2002) 111 Yale Law Journal 1575

[50] Lemley (n 6)

[51] Schwartz, Andrew A, 'The Corporate Preference for Trade Secret' (2013) 74 Ohio State Law Journal 623

[52] Orly Lobel, 'Filing for a Patent Versus Keeping Your Invention a Trade Secret' (Harvard business Review, November 21 2013) <https://hbr.org/2013/11/filing-for-a-patent-versus-keeping-your-invention-a-trade-secret> accessed April 2023

discovery and reverse engineering. Reverse engineering is an approach utilized to understand the physical and functional attributes of a product with the aim of replicating or redesigning the original.[53] Independent creation refers to the development of a similar product by the defendant without access to or reference from the plaintiff's trade secret.[54] Moreover, Trade secrets do not require registration, and public disclosure of secret information can extinguish trade secret protection. Maintaining secrecy is mandatory for establishing protection.

Compared to patents, trade secrets have a broader scope, which protects both patentable and non-patentable information. "Trade secret law reaches several corners patent laws cannot. Trade secrets broadly cover confidential business information, technical information, and/or know how.[55] Commercial information may include client lists, fiscal information, business methods and strategies, and other operational data related to running an enterprise; technical information may include drawings and designs, prototypes, manufacturing processes, not patentable or not patented inventions, formulae or recipes, genetic materials, and fragrances, whereas "know-how includes information about methods, steps, and processes for achieving efficient results."[56]

2.4. Protection of Trade secrets under Paris Convention

The Paris Convention for the Protection of Industrial Property is one of the oldest international conventions regulates IP rights. It applies to a wide range of industrial property: patents, trademarks, industrial designs, utility models, service marks, trade names, geographical indications, and repression of unfair competition. Ethiopia has ratified the Paris Convention on November 5, 2024, with reservation to Article 28 of the Convention (provision relating to disputes settlement) and enacted the Paris Convention for the Protection of Industrial Property Ratification Proclamation No. 1351/ 2024.

The Paris Convention for the Protection of Industrial Property regulates unfair competition in Article 10bis, mandating member countries to provide effective protection against unfair

[53]Bhavna Hariharan , 'Reverse Engineering' in M Augier and D J Teece (eds), The Palgrave Encyclopedia of Strategic Management (Palgrave Macmillan 2018)

[54] Douglas .and Schultz (n 23)

[55] Ibid

[56] Ibid

competition in industrial and commercial activity. Article 10bis of the convention defines unfair competition broadly as acts contrary to honest practices, and enumerates three specific prohibited behaviors such as, acts that cause confusion, false allegation, and misleading the public. Article 10bis of the Convention lacks a detailed definition of unfair competition; it leaves considerable room for interpretation.

The Paris Convention does not expressly mention trade secrets.[57] However, many legal scholars argued that Article 10bis provides indirect protection for trade secrets because misappropriation of trade secrets is inherently contrary to "honest commercial practices."[58] The Paris convention does not provide detailed definition of unfair competition, nor specifically addresses trade secrets. Trade secrets typically fall under the general umbrella of unfair competition. Thus, the Paris Convention does not directly govern trade secrets but they are protected as part of the general obligation to prevent unfair competition.

Additionally, the Convention does not specify particular remedies but obliges member states to offer certain legal remedies to address violations of industrial property rights. Article 10ter stipulates that member countries must ensure that nationals of other member states have access to appropriate legal remedies to effectively address acts mentioned in Articles 9, 10, and 10bis, which include the misuse of trademarks, false indications of source, trade names, and unfair competition. The Convention mandates member states to provide appropriate legal remedies to effectively repress an act of unfair competition, but it does not specify the remedies to be applied in such cases.

2.5. Protection of Trade Secrets under COMESA Competition Regulations and Rules

The common market for eastern and southern Africa (COMESA) is a regional economic organization consisting of 21 member countries including Ethiopia. it established in 1994, with the mission to 'achieve sustainable economic and social progress in all member states though

[57] Gintarė Surblytė, 'Enhancing TRIPS: Trade Secrets and Reverse Engineering' in Hanns Ullrich, Rainer M Hilty, Martin Lamping and Josef Drexl (eds), TRIPS 20: From Trade Rules to Market Principles (Springer 2016) 737

See also WIPO guide to trade secrets and innovation < https://www.wipo.int/web-publications/wipo-guide-to-trade-secrets-and-innovation/en/part-iii-basics-of-trade-secret-protection.html > accessed November 2023

[58] Ibid

increased cooperation and integration in many fields including trade, customs, monetary affairs, transport, communication and information, technology, industry and energy, agriculture, environment and natural resources.'[59]

The COMESA Competition Regulations (2004) provides the substantive principles and obligations governing competition within COMESA member states. Part three of the COMESA competition regulations (2004) deals with anti- competitive business practices and conduct. It prohibits anti-competitive practices or conduct, such as restrictive agreements, decisions, and concerted practices; a abuse of dominant position; cartels or collusive agreements (price fixing, market sharing); and anti-competitive mergers. The regulations do not expressly mention trade secret misappropriation as an anti-competitive practice. The regulations do not expressly mention "trade secret" nor do they set out detailed rules for when a trade secret is protected. Article 4(2) of the regulations recognizes that IP protections exist under other laws, including inventions, industrial models, trademarks, and copyrights, and do not derogate from those rights. However, when IP is used in a way that hinders competition, competition rules may intervene. According to this provision, IPRs should be used in a manner that does not cause anti- competitive effects.

The COMESA Competition Rules (2004) set out procedural principles —how the provisions of the competition regulations are to be implemented in practice. They prescribe procedures for the notification of mergers, investigation of restrictive practices, hearings, and leniency applications. Articles 30 and 73 of the COMESA Competition Rules (2004) provide a general confidentiality principle. The general confidentiality principle or rule ensures the protection of confidential information submitted to the Commission or Board during investigations or proceedings. It imposes an official duty on the of staff of the Commission, the Commissioners, and the secretariat of the Board not to disclose any information, documents, or data presented to them in the course of investigations and/or hearings, nor shall they disclose any of the findings of investigations except under certain conditions. It is all about internal regulations and governs how confidential information is treated during investigation and proceedings. The COMESA Competition Rules (2004) mainly deals with the general confidentiality principle. It does not specifically mention trade secrets and mandates trade secret proceedings be held in camera. It also does not recognize evidence gathering and preservation rules, including ex parte emergency

[59] www.comesa.int

searches to preserve and obtain proof (Anton Piller), pre-trial discovery, and the prima facie evidence rule.

Therefore, COMESA competition regulations and rules do not expressly regulate trade secrets or grant a proprietary right to trade secrets. They do not define what constitutes a trade secret, what actions are considered misappropriation, and do not specify remedies for misappropriation, procedural safeguards (closed chambers), and evidence-gathering and preservation rules. However, to some extent, they are indirectly protected in the context of the general confidentiality principle or procedural confidentiality.

2.6. The Indicators of Effective Protection of Trade Secrets

The OECD published a trade policy paper examining trade secret legal regimes across diverse countries. This study develops an indicator called the Trade Secrets Protection Index that measures the stringency of the protection of trade secrets. The Trade Secrets Protection Index contains five elements: (1) definitions and coverage; (2) specific duties and misappropriation; (3) remedies and restrictions on liability; (4) enforcement, investigation and discovery, and test data exclusivity; and (5) system functioning and related regulation.

The definition was evaluated based on whether the existence of laws that clearly define trade secrets, encompassing both commercial and technical information. Coverage was assessed in terms of whether a breach of duty, wrongful acquisition, or third-party misappropriation constitutes trade secret infringement under both civil and criminal law.

Specific duties and misappropriation were examined in terms of the existence the definition of the duties of confidentiality and misappropriation under civil and criminal laws. This aspect was evaluated to determine whether the duty of confidentiality arises from explicit agreements or implied duties within employment and commercial relationships. Additionally, this element assesses the validity of the restrictive agreements on competition and post-employment relationships as well as the existence of restrictions on its enforceability.

Remedies are assessed based on the availability of civil and criminal options. Civil remedies include preliminary and permanent injunctions, injunctions to eliminate wrongful head starts, delivery or destruction of infringing materials, compensatory damages (actual loss, unjust enrichment, or reasonable royalty), and punitive or statutory damages. Restrictions on liability were assessed based on the availability of independent creation and reverse engineering as legitimate defenses to trade secret misappropriation.

The enforcement, investigation, discovery, and data exclusivity elements were assessed in terms of the availability of emergency searches to preserve and obtain proof, ex parte emergency searches, pre-trial discovery, and protection of the confidentiality of trade secrets during litigation, and data exclusivity in drugs and agricultural chemicals.

The functioning of the system and related regulations were measured based on the substantive review of technology transfer, registration requirements of technology transfer, how well legal systems work, how well courts / regulatory bodies are trained, security of property rights, and practical operation of protection.

The Trade Secrets Protection Index aims to assess protection across various legal frameworks through several sub- components. These components are designed to capture different aspects of how trade secret protection is defined, enforced, and operated in practice. Specifically, the Index examines what constitutes a trade secret, what actions are considered misappropriation, the scope of available remedies, the degree of enforcement, procedural safeguards, and the overall functioning of the system. This includes evaluating the effectiveness of legal systems and practical enforcement of trade secret protection.

According to an OECD trade policy paper, the presence of certain factors within a legal system signifies effective protection of trade secrets. These factors include the existence of laws that clearly define trade secrets, encompassing both commercial and technical information, and laws that clearly delineate acts or behaviors that constitute misappropriation. Additionally, the availability of civil remedies, such as injunctions, compensatory damages (including actual loss, unjust enrichment, or reasonable royalty), punitive damages, destruction of infringing goods, and seizure, as well as criminal remedies, is crucial. Furthermore, procedural safeguards are essential, including emergency searches to preserve and obtain proof, ex parte emergency searches, pre-trial discovery, protection of the confidentiality of trade secrets during litigation, and the availability of data exclusivity in pharmaceuticals and agricultural chemicals. Finally, the presence of robust enforcement in practice is necessary.

2.7. Experience of some Jurisdictions

2.7.1 United States of American

The United States has the most robust and sophisticated systems of trade secret legislation.[60] The USA has a comprehensive common law and statutory legal framework for the protection of trade secrets. In the USA, the trade legal secrets legal regime has evolved gradually. Trade secrets were regulated by common law until the first restatement (tort) adopted by the American law institute in 1939. In 1979, the Uniform Law Commission adopted the Uniform Trade Secrets Act (UTSA). UTSA has been adopted by all states except New York. UTSA regulates the civil aspects of trade secrets and provides a civil cause of action for trade secrets misappropriation at the state level.

Most recently, in 2016, the USA enacted the Defend Trade Secrets Act (DTSA) to provide a federal civil cause of action for trade secret misappropriation. The DTSA is complementary to UTSA, and it did negate the continued application of UTSA. DTSA regulates trade secrets cases involving interstate and foreign commerce. Concerning criminal law, the Economic Espionage Act (EEA) was enacted in 1996 to criminalize trade secret misappropriation. More than 25 states have criminal trade secrets statutes.[61]

2.4.1.1 Definition and Coverage

In the US, trade secrets definition covers confidential business information, technical information, and/or know-how. The UTSA defines a trade secret as:

> Information, including a formula, pattern, compilation, program, device, method, technique, or process that:

[60] Douglas .and Schultz (n 23)

[61] Ibid

(i) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[62]

The DTSA defined "trade secret" as:

All forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

a) The owner thereof has taken reasonable measures to keep such information secret, and

b) The information derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable through proper means by another person who can obtain economic value from the disclosure or use of the information.[63]

Concerning the definition of trade secrets, there is no significant difference between UTSA and DTSA, but DTSA contains a broad list of information that falls under the ambit of trade secret protection. Similarly, the UTSA and DTSA have employed three requirements: secrecy, commercial value, and reasonable steps to maintain secrecy to define trade secrets. This definition is similar to that of the TRIPS agreement. Moreover, the Restatement of Unfair Competition, contains a list of six criteria used to determine the existence of trade secrets.

1) The extent to which the information is known outside the business;

2) The extent to which it is known by employees and others involved in his business;

3) The extent of the measure taken by him to guard the secrecy of the information;

4) The value of the information to him and his competitors;

[62] Uniform Trade Secrets Act 1979 (UTSA 1979).

[63] Defend trade secret act 2016 (DTSA 2016), section 2.

5) The amount of efforts or money expended by him in developing the information;

6) The ease or difficulty with which the information could be properly acquired or duplicated by others.[64]

The USA provides a detailed definition of trade secrets. Federal and state legislations define “trade secret” specifically and set out detailed lists of information that constitute trade secrets. The scope of protection covers both technical and commercial information. However, no single legislation defines trade secrets in Ethiopia. Ethiopian law does not clearly define what kind of information constitutes a trade secret. The exact scope of protection is unclear, and ambiguity exists regarding whether test data, know-how, or technical information is included.

2.4.1.2 Acts that Constitute Misappropriation under US Trade Secrets Law

Under US law, misappropriation includes a breach of duty and third-party misappropriation. Third-party liability arises if it has knowledge or reason to know. US trade secret law prohibits both actual and threatened misappropriation.

UTSA defines misappropriation as:

(i) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(ii) disclosure or use of a trade secret of another without express or implied consent by a person who

(A) used improper means to acquire knowledge of the trade secret; or

(B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was

(I) derived from or through a person who had utilized improper means to acquire it;

(II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

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[64] The Restatement of Unfair Competition 2002, § 39.

> (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
>
> (C) before a material change of his [or her] position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake. [65]

UTSA defines improper means as ‘theft, bribery, misrepresentation, breach, or inducement of a breach of duty to maintain secrecy or espionage through electronic or other means’. DTSA also defines misappropriation, similar to UTSA.

Concerning criminalization of trade secrets misuse, the Economic Espionage Act prescribes misappropriation as:

> Theft of trade secrets occurs where a party: with intent to convert a trade secret, that is related to a product or service used in or intended for use in interstate or foreign commerce, to the economic benefit of anyone other than the owner thereof, and intending or knowing that the offense will, injure any owner of that trade secret, knowingly —
>
> (1) steals, or without authorization appropriates, takes, carries away, or conceals, or by
>
> fraud, artifice, or deception obtains such information;
>
> (2) without authorization, copies, duplicates, sketches, draws, photographs, downloads,
>
> uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails,
>
> communicates or conveys such information;
>
> (3) receives, buys, or possesses such information, knowing the same to have been stolen or
>
> appropriated, obtained, or converted without authorization;
>
> (4) attempts to commit any offense described in paragraphs (1) through (3); or
>
> (5) conspires with one or more other persons to commit any offense described in

[65] UTSA 1979 (n 62)

> paragraphs (1) through (3), and one or more of such persons do any act to effect the object of the conspiracy.[66]

The USA federal and state legislations clearly enumerate acts that constitute misappropriation. Misappropriation generally covers two broad categories: (1) acquisition of a trade secret by improper means and (2) disclosure of a trade secret without consent. Misappropriation involves acquiring a trade secret by improper means, using, or disclosing it without the owner's consent. Actors such as employees, contractors, competitors, and third parties who obtain information improperly, use, or disclose it without the owner's consent are covered. However, Ethiopian law does not clearly enumerate the acts that constitute misappropriation. With respect to acts covered as infringements, wrongful acquisition or misappropriation by a competitor was the only act covered as an infringement under Proclamation 813/2013. The Proclamation only considers wrongful acquisition or misappropriation by a competitor as an infringement of trade secrets. The Proclamation does not sanction breach of confidential obligation and third-party misappropriation

2.4.1.3. Restrictions on Liability

The comments to the UTSA enumerate independent invention, reverse engineering, observation from public use or display, and review of published literature as proper means for discovering a trade secret.[67] DTSA expressly provides reverse engineering and independent creation as a lawful means of acquiring of trade secrets. The acquisition of trade secrets by improper means includes 'theft, bribery, misrepresentation, breach, or inducement of a breach of a duty to maintain secrecy or espionage through electronic or other means', but does not include reverse engineering, independent derivation, or any other lawful means of acquisition. [68]

Unlike the USA, which expressly provides exceptions to trade secrets protection or recognizes the lawful means of acquiring trade secrets, such as independent creation and reverse engineering, Ethiopian legal regimes do not expressly recognize independent creation and reverse engineering as lawful means of acquiring trade secrets.

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[66] The Economic Espionage Act 1996 (EEA 1996), 18 USC § 1832.

[67] Douglas .and Schultz (n 23)

[68] DTSA 2016 (n 63)

2.4.1.4. Remedies

US trade secrets law provides civil and criminal remedies to redress trade secret misuse. Civil remedies include damages, preliminary and permanent injunctions, seizure, and attorney costs. Compensation was measured in the form of actual loss, unjust enrichment, and reasonable royalty. When the plaintiff fails to prove the actual loss it sustained or the unjust enrichment of the defendant, the court awards the damages in the form of a royalty. Punitive damages is also awarded if the defendant willfully and maliciously misappropriates trade secrets.[69]

Concerning criminal remedies, the Economic Espionage Act imposes fines and imprisonment, depending on the interests involved. When trade secrets have been misappropriated with the intent to benefit a foreign agent, the Economic Espionage Act imposes imprisonment of up to 15 years and a fine of up to $500,000 on individuals as well as a fine of up to $10,000,000 on the organization. In cases of ordinary misappropriation where foreign interest is not involved, it imposes imprisonment of up to ten years and a fine on an individual as well as a fine of up to $5,000,000 on the organization.

Under the Ethiopian legal regime, civil remedies may include damages but rely on general tort provisions. Ethiopian tort law only recognizes compensatory damages and does not recognize punitive or exemplary damages for willful misappropriation. Under Ethiopian tort law, compensatory damages only assessed in the form of actual loss, but it does not provide modern mechanisms tailored to trade secrets, such as the defendant's unjust enrichment or reasonable royalty as alternative methods for calculating damages. The Ethiopian legal regime does not expressly provide for other civil remedies, recall and destruction of infringing products, or delivery or seizure.

Regarding criminal remedies, Ethiopia's criminal code does not sanction third-party misappropriations. Apart from the limited scope, the criminal liability imposed for breaching confidentiality obligations and unfair competition is insufficient or minimal. The punishment for breaching confidentiality obligations is simple imprisonment not exceeding one year and a fine

[69] Ibid

not exceeding ten thousand Birr, while for unfair competition, it is a fine of not less than one thousand Birr or simple imprisonment for not less than three months.

2.4.1.4.1 Injunctive Relief and Inevitable Disclosure Doctrine

US trade secret law empowers a court to issue an injunction to prevent any actual or threatened misappropriation. The inevitable disclosure doctrine stems from threatened misappropriation. The inevitable disclosure doctrine is a common law doctrine that prevents the departing employee from working for a competitor of his or her former employer on the reason that 'the employee's new job duties will inevitably cause the employee to rely upon knowledge of the former employer's trade secrets'.[70] The plaintiff must show that its former employee had access to its trade secrets and he holds similar duties with the new employer to make it *inevitable* that he will use or disclose those trade secrets in the performance of his new job duties.[71] Moreover, "the plaintiff must also show that it is direct competition with the new employer".[72] 'If an employer proves that its former employee will inevitably disclose its trade secrets to a competitor, the court can grant an injunction against that employee from working for the competitor.'[73]

The inevitable disclosure doctrine creates tension between freedom of employment and the protection of trade secrets. Because of these two competing interests, the doctrine has not been adopted by all the states. Some states have adopted the doctrine outright, others have rejected the doctrine completely, and the third group has adopted the doctrine with certain limitations. However, the inevitable disclosure doctrine is not recognized in Ethiopia.

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[70] Randall E. Kahnke, Kerry L. Bundy and Kenneth A. Liebman, 'Doctrine of Inevitable Disclosure' Intellectual property owners association, September 2008) < https://ipo.org/wp-content/uploads/2013/04/DoctrineofInevitableDisclosure.pdf> accessed August 2024

[71] Ryan M. Wiesner, '*A State-By-State Analysis of Inevitable Disclosure: A Need for Uniformity and a Workable Standard'* (2012) 16 Marquette Intellectual Property Law Review 211

[72] Keith A. Roberson, 'South Carolina's Inevitable Adoption of the Inevitable Disclosure Doctrine: Balancing Protection of Trade Secrets with Freedom of Employment' (2001) 52 South Carolina law review 895

[73] Wiesner (n 71)

2.4.1. 5. Preservation of Secrecy During Litigation

DTSA empowers the court to grant protective orders that may be necessary and appropriate to preserve the confidentiality of trade secrets.[74] Protective orders impose different types of access restriction on trade secrets. The court upholds the confidentiality of trade secrets by sealing the files and holding the hearing in the camera or any other measure. However, there is no legal provision under Proclamation No 813/2013 and other relevant legislations that provides protective measures to ensure the secrecy of information during litigation.

2.4.1.6. Evidence-Gathering and Preservation

In the United States, extensive procedures are available to protect trade secrets. The federal and state rules of civil procedures incorporate an ex parte emergency search to preserve and obtain proof. An ex parte emergency search to preserve and obtain proof is also available in criminal proceedings. Moreover, pre-trial discoveries have been recognized in both civil and criminal proceedings. However, Evidence gathering and preservation rules, such as emergency search to preserve and obtain proof, ex-parte emergency search, pre-trial discovery, and the prima facie evidence rule, were not incorporated under Proclamation No. 813/2013 and other relevant procedural laws in Ethiopia.

Generally, the USA has a common law legal system that relies heavily on case law and judicial interpretation. Its economy is highly developed, market-oriented, and service- and technology-driven. GDP per capita is high, the average standard of living is much higher. The USA has a more mature, well-resourced, and coherent institutional structure for enforcing trade secrets, with both civil and criminal arms and strong procedural tools. The court is primarily responsible for enforcing trade secrets. The United States offers a robust and harmonized legal framework for trade secret protection, providing clear definitions, acts that constitute misappropriation, conditions for its protection, civil and criminal remedies, and strong procedural safeguards that help plaintiffs preserve evidence and protect trade secrets during litigation.

In contrast, Ethiopia has a civil law legal system that relies heavily on written codes. Ethiopia is largely agrarian with low productivity, and GDP per capita is low; much lower standard of living

[74] DTSA 2016 (n 63)

on average. The administrative or quasi-judicial bench is primarily responsible for enforcing trade secrets in civil and administrative cases, while criminal cases fall under the jurisdiction of the court. Ethiopia's trade secrets protection is narrow and fragmented; it does not provide clear definitions, the exact scope of protection or acts that constitute misappropriation is unclear, civil and criminal remedies are limited, and procedural safeguards are weak.

2.7.2 Uganda Experience

Until 2009, trade secrets in Uganda were regulated by the jurisprudence of common law and pre-independence laws.[75] Uganda adopted the Trade Secret Protection Act (TSPA) in 2009. Uganda is a member of the WTO and the adoption of the Trade Secrets Protection Act is intended to adhere to the minimum protection provided under the TRIPS Agreement.

2.7.2.1 Definition

The Uganda Trade Secrets Protection Act defines trade secret as 'formula, pattern, compilation, program, method, technique, or process, or information contained or embodied in a product, device, or mechanism'. For such information to qualify as a trade secret, it should be used in a trade or business; it should not be generally known in that trade or business; it should offer economic value from not being generally known; and the owner should carry out reasonable efforts to maintain its secrecy. The three definitional elements of trade secrets provided under the TRIPS Agreement were incorporated into the Uganda Trade Secrets Protection Act. Apart from these three definitional elements, the Uganda Trade Secrets Protection Act incorporated one additional element or usage of information in business or trade.

Usage" requirement under Uganda's Trade Secrets Protection Act, 2009, is one of the four requirements for information to qualify as a trade secret. In the definition of trade secret (Section 2 of the Act), one of the requirements is that the information: "…is, or may be used in a trade or

[75] Anna Nakaayi, 'Relevance and Viability of trade Secret protection Developing countries: Case Study Uganda' (2017) https://www.academia.edu/41750766/Relevance_and_Viability_of_Trade_Secret_Protection_Developing_Countries_Case_Study_Uganda > accessed May 2024

business". This means that the information must be used or be usable in a trade or business. Confidential information with no commercial applications may not qualify. The usage requirement ensures that only business-related, economically valuable information is protected as a trade secret, not every kind of confidential information. Thus, the information must have a commercial orientation or must have a connection (or potential connection) with a trade, industry, or business activity.

Uganda's Trade Secrets Protection Act clearly defines what constitutes a trade secret, specifies the conditions for its protection, and enumerates acts considered contrary to honest commercial practice. However, there is no statutory definition of trade secrets in Ethiopia.

2.7.2.2. Acts that Constitute Misappropriation under the Ugandan Trade Secrets Protection Law

The Uganda Trade Secrets Protection Act prohibits breaches of duty and third-party misappropriation**.** The Uganda Trade Secrets Protection Act states that disclosure, acquisition, or use of a trade secret by improper means or in a manner contrary to honest commercial practice constitutes an infringement.[76] Disclosure, contrary to honest commercial practices, includes the following:

(i) discovery of the trade secret through physical force or unauthorized entry into the business premises of the owner either directly or through a third party;
(ii) discovery of a trade secret through fraudulent misrepresentation to induce disclosure or through an act of deceit, directly or constructively;
(iii) discovery of undisclosed information through eavesdropping, electronic listening, unauthorized access to the person's private correspondence or files, or any other improper means;
(iv) disclosure of undisclosed information through breach of contract or in breach of confidence;
(v) disclosure of information, where by virtue of the place of how it is obtained, circumstances suggest that the information is subject to an expectation of privacy;
(vi) disclosure or use of undisclosed information obtained unlawfully;
(vii) disclosure of undisclosed information following being informed that it is subject to a duty of confidentiality; or

[76] Trade secrets Protection Act No. 2/2009 (TSPA), Section 5(1) (3).

(viii) disclosure of information by a person who lawfully obtained it from a third party who obtained it unlawfully and the person disclosing or using the information knew or ought to have known that the information was obtained unlawfully.[77]

Uganda's Trade Secrets Protection law states that the disclosure, acquisition, or use of a trade secret by improper means or in a manner contrary to honest commercial practice constitutes trade secrets misappropriation. It broadly enumerates acts that constitute dishonest commercial practice with respect trade secrets misappropriation. However, the Ethiopian legal regime does not clearly and broadly list acts that count as wrongful acquisition/use (misappropriation).

2.7.2.3. Restrictions on Liability

Under Uganda's trade secret law, obtaining information through honest commercial practices does not constitute misappropriation. The defenses recognized under the Uganda Trade Secrets Protection Act include obtaining information from a publicly available source, reverse engineering, and independent inventions.[78]

2.7.2.4. Remedies

Civil remedies under Uganda's trade secret law include injunction, damages, and delivery up. [79] The damages were assessed by considering the loss of earnings caused to the owner, unfair profit accrued or enriched by the defendant, and adjustment in the form of a royalty. Exemplary or punitive damages has also been recognized under Uganda's Trade Secrets Act. The Act empowers a court to order the defendant to deliver or destroy any item containing or embodying a trade secret that was improperly disclosed, obtained, or used.[80]

Under Uganda's Trade Secrets Protection Act, Section 13, the court is empowered to grant temporary or permanent injunctions with respect to the improper disclosure, acquisition, or use of a trade secret. Section 13 of the Act provides that an injunction can be continued for a period

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[77] TSPA No. 2/2009 Section 6.

[78]TSPA No. 2/2009 Section 7.

[79]TSPA No.2/ 2009 section 12.

[80] Ibid.

after the secret ceases to exist to eliminate any unfair commercial advantage. Sections 14 and 16 of the Act incorporate both compensatory and exemplary (punitive) damages.

The compensatory damages assessed in the form of actual loss or the loss caused by the improper disclosure, acquisition, or use of a trade secret, account of profits, or the profits that the defendant earned as a result of wrongful conduct. The Act prevents double recovery where the account of profits and damages in the form of actual loss would overlap. Section 17 of the Act mandates the court to issue adjustment orders whereby the defendant is required to pay a royalty to the plaintiff, contribute to development costs, or establish terms for the future exploitation of the information by both parties. This provision aims to ensure equity in situations where secrecy cannot be fully reinstated. Furthermore, Section 12 of the Act empowers the court to compel the defendant to surrender or destroy any material containing or embodying the trade secret related to the improper disclosure, acquisition, or use.

Under the Ethiopian legal regime, remedies may include damages but rely on general tort provisions. Ethiopian tort law only recognizes compensatory damages and it does not recognize punitive or exemplary damages for willful misappropriation. Under Ethiopian tort law, compensatory damages only assessed in form of actual loss but it does not provide modern mechanisms tailored to trade secrets, such as the defendant's unjust enrichment or reasonable royalty as alternative methods for calculating damages. Ethiopian legal regime does not expressly provide other civil remedies, recall and destruction of infringing products, and delivery up or seizure.

2.7.2. 5. Preservation of Secrecy During Litigation

Concerning the preservation of confidentiality during litigation, the Uganda Trade Secrets Protection Act empowered the court to hold hearings in camera, order that all or any of the records of the proceedings be sealed, or order that any person involved in the proceedings not disclose an alleged trade secret without the prior approval of the court.[81] In Uganda, the preservation of secrecy is not only limited to court proceedings but also far-reaching to the government department. The Uganda Trade Secrets Protection Act provides that when a

[81] TSPA No. 2/2009 section 20

government agency requires the submission of confidential business information or trade secrets, it obligated to protect such trade secrets from disclosure.[82] However, there is no legal provision under Proclamation No. 813/2013 or other relevant legislation that provides protective measures to ensure the secrecy of information during litigation.

Generally, Uganda's legal system comprises English common law, statutory law, and customary law. Its economy is market-based, with a strong agricultural backbone and a growing services sector. The court is primarily responsible for enforcing trade secrets in both civil and criminal cases. Uganda's Trade Secrets Protection Act (2009) establishes a comprehensive legal framework for the protection of trade secrets. It clearly defines what constitutes a trade secret, specifies the conditions for its protection, lists acts considered contrary to honest commercial practice, and provides a wide range of civil remedies, including injunctions, damages, destruction of infringing products, and delivery. It also protects test data or information submitted to government departments and sets out specific defenses or restrictions on their liability.

In contrast, Ethiopia has a civil law legal system that relies heavily on written codes. The administrative or quasi-judicial bench is primarily responsible for enforcing trade secrets in civil and administrative cases, while criminal cases fall under the jurisdiction of the court. Ethiopia's trade secrets protection is narrow and fragmented; it does not provide clear definitions, the exact scope of protection or acts that constitute misappropriation is unclear, civil and criminal remedies are limited, and procedural safeguards are weak.

2.8. The Rationale for a Standalone Trade Secrets Law

In the preceding comparative analysis, we observed that while the USA and Uganda have a standalone trade secrets law, Ethiopia lacks a single, dedicated trade secrets law; instead, trade secret protection is dispersed across multiple fragmented statutes, including tort or antitrust law, employment law, contract law, and commercial law. This multi-tiered trade secret regime results

[82] TSPA No. 2/2009 section 11

in protracted, ambiguous, challenging, uncertain, and unpredictable litigation.[83] These diverse regimes employ varying standards to pursue different and occasionally conflicting policy objectives[84].

A standalone law provides clarity, legal certainty, consistency, specific remedies tailored to trade secret misappropriation, and stronger and more predictable enforcement. In the United States, the adoption of the Uniform Trade Secrets Act (UTSA) has heightened awareness of trade secret laws among legal professionals, companies, judges, and others and has facilitated greater consistency in the application of trade secret laws and in the laws themselves.[85] However, prior to the UTSA, there were significant disparities among states regarding various trade secret issues, ranging from the types of conduct constituting trade secret misappropriation to the remedies available.[86]

The adoption of standalone legislation is insufficient on its own; rather, trade secrets law must be comprehensive and harmonize the diverse interests or policies involved. Trade secrecy functions as an umbrella encompassing a variety of distinct interests, such as promoting honest business practices, fostering innovation or efficient investment in research and development, human capital, and security, and regulating the relationships between a firm and its employees, commercial partners, and customers.[87] Given that trade secret law intersects with numerous legal concepts, they affect the interests of owners, employees, customers, business partners, and public interests or innovation policies. Trade secret law comprises a collection of distinct legal regimes

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[83] Charles Tait Graves, 'Trade Secrecy and Common Law Confidentiality: The Problem of Multiple Regimes' in Rochelle C Dreyfuss and Katherine J Strandburg (eds), The Law and Theory of Trade Secrecy: A Handbook of Contemporary Research (Edward Elgar 2011).

[84] Ibid

[85] David S. Almeling, 'Seven Reasons Why Trade Secrets Are Increasingly Important' (2012) 27 Berkeley Technology Law Journal 1091

[86] Ibid

[87] Rochelle C Dreyfuss and Katherine J Strandburg (eds), The Law and Theory of Trade Secrecy: A Handbook of Contemporary Research (Edward Elgar 2011).

for regulating trade secrets, each with different methods and policy objectives.[88] A coherent, predictable regime of trade secret law would be better positioned to balance the interests of employers and employees, promote innovation by allowing the use of non-secret information, deter anti-competitive threats and lawsuits, and harmonize trade secret law with policies that bring uniformity.[89]

Generally, a standalone legal framework offers clarity, legal certainty, consistency, and specific remedies tailored to address trade secret misappropriation, thereby enhancing enforcement predictability, policy coherence, and investor confidence. Such a dedicated law precisely delineates what constitutes a trade secret, what actions amount to misappropriation, and the available remedies for the same. In contrast, a fragmented legal system may cause businesses and courts to struggle to determine applicable provisions and their interactions. Specific statutes can provide tailored remedies, whereas general laws often lack these specialized tools, rendering protection less effective.

Furthermore, a sui generis statute can consistently address various aspects, whereas fragmented rules may result in gaps. Courts and enforcement agencies can rely on a unified body of law, leading to more predictable and efficient decisions, whereas fragmented systems require piecing together provisions from different legal regimes, potentially resulting in inconsistent outcomes. Legislators can update a single statute in response to changing circumstances, whereas reforms in fragmented provisions are more challenging because of the need for changes across multiple legal regimes. Clear, standalone trade secret protection reassures both domestic and foreign investors that their trade secrets will be safeguarded, whereas fragmentation may deter investment and technology transfer due to uncertainty and perceived weak protection.

[88] Graves (`n 83)

[89] Ibid

CHAPTER 3

PROTECTION OF TRADE SECRETS IN ETHIOPIA

3.1. Introduction

In Ethiopia, the evolution of trade secret protection was traced back to the 1957s with the introduction of the Penal Code. The Penal code states that 'whosoever, having learned of a scientific, industrial, or trade secret or of its applications as a result of his position, duties or employment, discloses it with intent to cause prejudice to its owner or possessor, or to derive an advantage from it for himself or another is punishable, upon complaint'.[90] Moreover, the 1960 the Ethiopian Commercial Code imposes a duty on a commercial agent not to disclose trade secrets disclosed to him by the principal or learned during its agency duties. The code stipulates that, upon termination of the agency agreement, a commercial agent may not take advantage of or disclose trade secrets revealed to him by the principal or learned during its agency duties.[91]

This chapter analyses the available legislative and policy approaches in Ethiopia concerning trade secret protection. Before directly analyzing the legal framework, it is important to explore the policy framework for the protection of trade secrets in Ethiopia.

3.2. Policy Framework Cconcerning Protection of Trade Secrets in Ethiopia

After 1991, Ethiopia introduced a wide range of policies and strategies in the economic, political, and social spheres. Among these were agricultural development- led industrialization (ADLI), national science, technology, and innovation policy, national policies on health, education and training, population, women, and energy. It is essential to explore the selected policy relevant to the protection of trade secrets in Ethiopia.

[90]The Penal Code of Empire of Ethiopia, 1957, Art. 409, Proclamation No. 158, Negarit Gazette Year 16, No.1.

[91] Commercial Code of Empire of Ethiopia, 1960, Art. 46 (3), proclamation No. 166, Neg Gaz Year 19, No. 3.

3.2.1 Draft National Intellectual Property Policy

The draft National Intellectual Property Policy of Ethiopia recognizes intellectual property as an instrument for ensuring social, cultural, and economic development. The draft policy is aimed

> To improve and promote increased use of intellectual property in encouraging creative, inventive, and innovative activities, protection of intellectual property assets, stimulating the transfer of foreign technology, promoting orderly trade, and strengthening the competitiveness of Ethiopian industry and business in and outside of the country.[92]

The draft policy has identified 13 (thirteen) major issues, inter alia, inadequate intellectual property legal framework, inadequate protection of IP assets, low level of enforcement of IPRs, inadequate intellectual property administrative framework and institutional capacity, and inadequate linkage of the national IP system to the international IP system. With the aim of addressing inadequate protection of IP assets, the draft policy recognizes the strategy to 'enact laws to provide protection for intellectual property assets such as trade secrets, geographical indications, and traditional knowledge, including those that are generated by public academic and R&D institutions using public resources'.[93] The draft policy acknowledges trade secrets as intellectual property assets.

3.3. The Legal Framework Concerning the Protection of Trade Secrets in Ethiopia

3.3.1. Protection of Trade Secrets under Trade Competition and Consumer Protection Proclamation NO. 813/2013

Proclamation No.813/2013 promulgated with aim of securing a fair competitive process by preventing and eliminating of anti-competitive trade practices and protecting the consumer.[94] This proclamation aims to address the issues of competition and consumer protection under one umbrella. Part two of this proclamation deals with anti-competitive trade practices, including the

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[92] Draft National Intellectual Property Policy and Strategy of the Government of the Federal Democratic Republic of Ethiopia, 2022

[93] Ibid

[94] Trade competition and consumer Protection proclamation(TCCPP), 2013, preamble, Proclamation no 813, Negaret Gazeta Year 20, No. 28.

abuse of market dominance, anti-competitive agreements, anticompetitive mergers, and anticompetitive unilateral acts of unfair competition. The Proclamation does not contain provisions specifically aimed at trade secrets. Instead, trade secrets are regulated by general rules of unfair competition. Trade secret owners generally rely on the rules of unfair competition to claim against competitors.

3.3.1.1. Definition and Coverage

The most challenging task lies in identifying confidential business information; hence, there are no statutory or court precedent-defined trade secrets in Ethiopia.[95] Apart from the absence of a trade secret definition under Proclamation No. 813/2013, other laws in the country have not addressed this issue. Consequently, courts are compelled to refer to foreign sources to understand the concepts and scope of trade secrets.[96] The Proclamation prohibits businesspeople from engaging in the following activities related to trade secrets:

> Any act of disclosure, possession, or use of information of another business person, without the consent of the rightful owner, in a manner contrary to honest commercial practice'.[97]
> [...]
> [And] 'Obtaining or attempting to obtain confidential business information of another business person through his current or former employees or obtaining the information to pirate his customers or to use for purposes that minimize his competitiveness.[98]

Article 8(2) (b) and (f) of Proclamation No. 813/2013 does not define the information that qualifies as trade secrets. Article 8(2) (b) of proclamation broadly uses term information. However, not all information qualifies as trade secrets. The TRIPS Agreement sets three requirements for the given information to qualify as trade secrets. The information must be secret (not known to the public) and have commercial value, and the owner must take reasonable precautions to maintain confidentiality. The Proclamation does not acknowledge these three requirements. Article 8(2) (f) of the proclamation uses the term confidential business

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[95] Interview with, Ato Kidane Tsageye, judge at the Trade Competition and Consumer Protection Administrative Court (Addis Ababa, Ethiopia, October 17 2024)

[96] Ibid

[97] Ibid Art. 8(2) (b)

[98] Ibid Art. 8(2) (f)

information. In this case, the proclamation provides confidentiality or secrecy as the condition for establishing protection; nevertheless, it does not provide commercial usefulness and the owner's reasonable effort to maintain secrecy.

Moreover, because of the proclamation, No. 813/2013 did not specify a list of information that qualifies as a trade secret; it is unclear whether the term confidential business information employed under Article 8(2) (f) broadly accommodates all confidential business information: commercial, technical, and/or know-how. Trade secrets can be categorized into business and technical information and/or know-how.

With respect to acts covered as infringements, wrongful acquisition or misappropriation by a competitor is the only act covered as an infringement under the proclamation. The Proclamation only provides wrongful acquisition or misappropriation by a competitor as an infringement of trade secrets. The Proclamation does not sanction breach of confidential obligation and third-party misappropriation.

TRIPS Agreement broadly elaborates unfair commercial practices related to trade secrets misuse as a breach of contract, breach of confidence, and inducement to breach, and includes the acquisition of undisclosed information by third parties.[99] The Proclamation prohibits businesspeople or competitors from engaging in dishonest commercial practices related to trade secrets. It does not apply to employees, business partners, and third parties who are not competitors. However, trade secret protection extends beyond the relationships between competitors. It could be enforced against any person who misappropriates trade secrets through a breach of duty, theft, bribery, hacking, espionage, or other improper means.

Countries that protect trade secrets through separate laws, including the United States, the European Union, and Uganda, and those that employ unfair competition laws for this purpose, such as China, extend the scope of infringers to all actors involved through a breach of duty and wrongful acquisition or misappropriation, including third parties. They also provided a comprehensive list of acts deemed to be dishonest commercial practices, including breach of

[99] TRIPS (n 20)

confidentiality duty, wrongful acquisition or misappropriation, and acquisition of trade secrets by a third party who knows or is able to know that the acquisition of such secrets was a result of violating honest commercial practices. Chinese anti-unfair competition law provides the following acts deemed as the infringement of trade secrets:

> Obtaining an obligee's trade secrets by theft, bribery, intimidation, electronic intrusion, or other improper means;
> Disclosing, using, or allowing others to use an obligee's trade secrets obtained by the means mentioned in the preceding paragraph; or
> Disclosing, using, or allowing others to use an obligee's trade secrets in violation of confidentiality obligations or the obligee's requirements on keeping such trade secrets confidential.
> Obtaining, disclosing, using, or allowing any other party to use an obligee's trade secrets by instigating, tempting, or helping any other party to violate the confidentiality obligations or the obligee's requirements on keeping such trade secrets confidential.
>
> Other natural persons, legal persons, and unincorporated organizations other than the business operators who commit the illegal acts listed in the preceding paragraph shall be deemed as infringement of trade secrets.
>
> Where a third party knows or should know of the fact that an employee or former employee of the right owner of trade secrets or any other entity or individual conducts any of the illegal acts specified in the first paragraph of this article, but still accepts, publishes, uses or allows any other party to use such secrets, such practice shall be deemed as infringement of trade secrets.[100]

In general, Proclamation No. 813/2013 does not define information that qualifies as trade secrets, and it only provides wrongful acquisition or misappropriation by a competitor as an infringement of trade secrets. The Paris Convention does not explicitly address trade secrets, nor does it provide a clear definition of what constitutes a trade secret. Furthermore, Article 10bis of the Convention lacks a detailed definition of unfair competition; it leaves considerable room for interpretation. It identifies only three specific prohibited behaviors as acts of unfair competition: actions causing confusion, false allegations, and misleading the public.

[100] Anti- unfair competition law of the People's republic of China 2019, Article 9

3.3.1.2. Specific Duties and Misappropriation

Proclamation No. 813/2013 did not define a breach of a confidential obligation and misappropriation. From the very outset, a breach of confidential obligation and third-party misappropriation do not constitute infringement under the proclamation. The Proclamation only provides wrongful acquisition or misappropriation by a competitor as an infringement of trade secrets. Moreover, the proclamation does not define the acts that constitute dishonest commercial practices, even with respect to trade secret misappropriation by competitors. According to Article 8 (2) (b) and 8 (2) (f) of the proclamation, the misappropriation of a trade secret encompasses the unauthorized disclosure, acquisition, or using of a competitor's information in a manner that contravenes honest commercial practice. This includes the acquisition of confidential information through former employees and using that information in order to pirate customers, or in ways that reduce a competitor’s ability to compete fairly. The proclamation does not provide a comprehensive statutory definition of trade secret misappropriation. It does not define dishonest commercial practice or delineate the behaviors that violate honest commercial practice concerning trade secret misappropriation, leaving considerable room for interpretation.

Article 2028 of the Ethiopian tort law provides a broad provision that applies to all types of offenses that cause damage to another person, and that could therefore apply to the damages caused by illegal use or disclosure of trade secrets. In this regard, Article 2028 of the Ethiopian Civil Code clearly states, “Whosoever causes damage to another by an offense shall make it good.”[101] Nevertheless, in the absence of a statutory definition of trade secrets in Ethiopia and a definite statutory provision defining offense or illegal conduct concerning trade secrets; it is not possible to derive clear conclusions regarding the precise applicability of Article 2028 of the Ethiopian Civil Code to trade secret violations.

An act of unfair competition is an offense under Ethiopian tort law. Article 2057 of the civil code provides that “a person commits an offense where, through false publication or by any other means contrary to good faith, he compromises the reputation of a product or the credit of a commercial establishment”.[102] However, the scope of unfair competition under this provision is

[101] Civil code of the Empire of Ethiopia, 1960, proclamation No.165, Negaret Gazette year 19, No. 2.

[102] Ibid

not broad enough to accommodate trade secret violations and it confined only to false statements or unjustifiable allegations that discredit competitors' products. Moreover, Article 2035 of Ethiopian tort law provides that a violation of the specific and explicit provisions of law gives rise to a tortuous liability.[103] However, the provisions relevant to trade secret protection under various laws are mostly general provisions. In general, the absence of a definition of trade secrets in Ethiopia and a definite or specific statutory provision articulating offenses concerning trade secret misappropriation limits the application of tort law provisions to trade secret misappropriation cases.

3.3.1.3. Remedies and Restriction on Liability

3.3.1.3.1. Remedies

To protect against the use or disclosure of the secret by the defendant, the owner of the trade secret may ask the court to grant an injunction to prevent its disclosure or use. However, once a trade secret is disclosed to the public, there is no trade secret any more, the right in the trade secret becomes valueless, and the only legal relief for the owner of the trade secret is monetary damages.[104]

Assessing monetary damage in trade secret litigation presents a unique set of challenges that are not found in other IP rights. Unlike patents, copyrights, and trademarks, trade secrets may lose value once disclosed and damages for their misappropriation must consider this unique form of asset erosion.

> Trade secrets seem incomparable to any of the other forms of intellectual property, as trade secrets are inherently fragile. Other forms of [IP] can survive infringement; the owner of a copyright, patent, or trademark may sue the infringer, bring a halt to the infringement, recover damages, and continue owning the right. Once a trade secret has been disclosed, however, it is no longer a secret.[105]

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[103] Ibid

[104] Felix Prandl, 'Damages for Misappropriation of Trade Secret' (1987) 22 Tort & Insurance law Journal 447

[105] Sy Jr. & L. Sy (n 2)

Trade secret law recognizes three separate categories of trade secret damage assessment methods: plaintiff's actual loss, defendant's unjust enrichment, and reasonable royalties. The plaintiff's loss include lost profits and other consequential losses, such as loss of good will, harm to reputation, costs incurred to prevent customer deception, expenses related to remedial actions to reduce the chance of recurrence or to protect or recover lost or at-risk accounts, a decrease in capital value, and development expenses.[106]

The defendant's unjust enrichment is assessed by evaluating the profits, or any benefits that the defendant was unjustly enriched from the misappropriation. When the plaintiff cannot prove actual damages, the defendant's unjust enrichment is the correct standard for determining damages. [107]This approach is also relevant when the defendant's profits exceeds the plaintiff's losses.[108] Generally, the defendant's unjust enrichment is the appropriate measure of damages when the plaintiff cannot prove actual loss or when the defendant's gains exceed the plaintiff's losses.

In most cases, the plaintiff may recover under either theory, but not both, to avoid double recovery.[109] However, recovery under both theories is not excluded when necessary to fully compensate the plaintiff.[110]The correct measure of damages is not restricted to either of these theories but may include a combination of both in certain situations, provided that there is no double accounting.[111]

If the plaintiff cannot prove actual loss or the defendant's unjust enrichment, an alternative method known as "reasonable royalty" may be employed to assess damages.[112] A reasonable

[106] Prandl (n 104)

[107] Michael J. Hutter, 'Trade Secret Misappropriation: A Lawyer's Practical Approach to the Case Law' (1978) 1 New England law Review 1

[108] Prandl (n 104)

[109] Hutter (n 107)

[110] Ibid

[111] Prandl (n 104)

[112] Ibid

royalty involves calculating the fair market value of a hypothetical license that the defendant would have paid to legally use a trade secret.

Nevertheless, Proclamation No.813/2013 does not incorporate these three standards of damages applicable to trade secret cases; rather, it simply refers to the relevant laws. Article 32(1) (b) of the Proclamation No.813/2013 provides that the adjudicative benches of the authority shall have the judicial power to order the payment of compensation in accordance with the relevant laws.

Ethiopian tort law provides only a general compensatory framework and lacks specific rules regarding trade secrets. Ethiopia's tort law primarily addresses tangible harms and has not adapted to address modern knowledge-based assets such as trade secrets. Ethiopian tort law relies exclusively on actual, provable loss and does not provide modern mechanisms tailored to trade secrets, such as the defendant's unjust enrichment or reasonable royalty as alternative methods for calculating damages. Thus, Ethiopian tort law recognizes only a single rigid method called plaintiff's actual loss and it does not recognize the defendant's unjust enrichment or reasonable royalty.

Under Ethiopian tort law article 2141, the victim of injury must prove both the existence and amount of damage.[113] It is often difficult for trade secret owners to prove actual loss because damages are intangible and speculative. Adopting damages assessment methods tailored to trade secrets, such as the defendant's unjust enrichment or reasonable royalty, helps to balance the evidentiary gap when the plaintiff is unable to prove actual loss. However, Ethiopian tort law does not recognize such mechanisms; instead, it provides guidance on the rule of equity when a plaintiff is unable to prove actual loss or in cases where the assessment of damages is difficult.

Article 2102 of Ethiopian tort law empowers the court to grant the equitable compensation when damages are not easily measurable, using equity as guide. Since there are no clear statutory rules or benchmarks on calculation of losses, the rule of equity leaves wide discretion to judges, which causes inconsistency in damage awards. Equity derives from judges' sense of fairness, leading to unpredictable outcomes and inherently brings uncertainty of results, as discretionary justice

[113] Ethiopian Civil Code (n 101)

naturally varies depending on the judge's conception of what is fair.[114] Moreover, judges often lack expertise in IP and other intangible asset valuations. This leads to inconsistent and often minimal awards.

In the case of Miti Engineering PLC versus Nuriya Siraj building materials and industry products trading and Ato Yoseph Dinku, the Ethiopian trade competition and consumer protection administrative court decided compensation based on the rule of equity in accordance with Article 2102 of the Ethiopian tort law.[115] The plaintiff sued the defendant for obtaining its confidential business information concerning video jet products by hiring the plaintiff's former employer and pirating its customers in violation of Article 8(2) (f) of the Trade Competition and Consumer Protection Proclamation NO 813/2013. The plaintiff claimed the actual loss of birr 2,175,694.00 (two million, one hundred seventy-five thousand, and six hundred ninety-four) for the defendant's misconduct, but the court decided only birr 200,000.00 (two hundred thousand) based on the rule of equity because the plaintiff was unable to prove actual loss. There was a significant difference between the amounts claimed and decided.

If only a single rigid method is recognized, victims could be undercompensated when proof is difficult. When a plaintiff fails to prove actual losses, apart from applying the rule of equity, Ethiopian tort law does not provide guidance on the application of other alternative methods, such as the defendant's unjust enrichment or reasonable royalty, to measure the damages attributable to trade secret misappropriation.

Ethiopian copyright and trademark laws have introduced a better experience by recognizing various damage assessment methods specifically designed for intellectual property rights. Article 34 of the Ethiopian Copyright and Neighboring Rights Protection Proclamation No. 410/2004 and Article 40 of the Ethiopian Trade Mark Registration and Protection Proclamation No. 501/2006 recognize multiple assessment methods: actual losses (encompassing material and moral damages), unjust enrichment (royalty equivalent), and net profit disgorgement. In addition,

[114] G. Krzeczunowicz, 'the Present Role of Equity in Ethiopian Civil Law' (1969) 13 No.3 Journal of African Law 145

[115] Miti Engineering PLC V Nuriya Siraj building materials and industry products trading and Ato Yoseph Dinku (File No. 000156, trade competition and consumer protection administrative court, may 29,2023) (unpublished)

both proclamations allow for the recovery of expenses. Both proclamations recognize different methods of calculating damages, providing flexibility depending on the circumstances of the infringement and the evidence available. They provide multiple alternatives for rights holders, enabling them to choose the most suitable damage-assessment method based on the evidence at hand.

Moreover, to determine the net profit, the market assessment is required, but the infringer can rebut parts of the profit gained from other market factors. This places the burden of proof on the defendant to prove what portion of the profits is derived from other market factors or non-infringing factors. This shift in the burden of proof strengthens the protection of intellectual property. Therefore, under both proclamations, compensation is determined based on (i) actual damages, (ii) the infringer's unjust enrichment (calculated as the royalty that would have been paid under a license), or (iii) the infringer's net profits attributable to the infringement. Both proclamations provide clear guidance on damage assessment regarding the respective intellectual property rights.

Apart from the absence of comprehensive damage assessment methods applicable to trade secrets misappropriation, Ethiopian tort law does not provide punitive damages when the offender's actions are intentional, willful, or malicious. Allowing punitive damages aligns with the fundamental goal of trade secret law, which is to safeguard inventions and maintain commercial integrity, especially when the offender's actions are intentional, willful, and planned.[116] Furthermore, trade secrets are inherently fragile because their confidentiality is permanently lost once they are revealed. Ordinary compensatory damages may not always be adequate to deter misappropriation. The misappropriation of trade secrets frequently involves intentional wrongdoing, making deterrent measures, such as punitive or exemplary damages, crucial.

Under trade secrets law, exemplary damages is recognized as a means to penalize intentional wrongdoing, discourage future misconduct, and safeguard innovation when compensatory damages inadequate. Many other legal systems recognize punitive damages for trade secret misappropriation to deter future violations. However, Ethiopian tort law does not incorporate

[116] Prandl (n 104)

punitive or exemplary damages to penalize intentional and malicious misappropriation. Articles 2090 and 2091 of Ethiopian tort law are purely compensatory and stipulate that the tortfeasor's liability shall be equal to the damage caused to the victim. The absence of punitive damages in Ethiopian tort law reduces the law's deterrent effect.

Therefore, concerning damage assessment, Proclamation No. 813/2013 refers to tort law, but Ethiopian tort law lacks comprehensive damage assessment methods applicable to trade secret misappropriation. Moreover, it does not recognize punitive damages. This limitation renders Proclamation No. 813/2013, or Ethiopian tort law, an inadequate remedy for trade secret misappropriation. In addition, the Proclamation No. 813/2013 does not expressly provide other civil remedies, such as preliminary or permanent injunction, recall and destruction of infringing products, and delivery up or seizure. Article 32(2) (a) of the Proclamation generally provides that the adjudicative benches of authority shall have judicial power to order the discontinuation of unfair acts.

3.3.1.3.2. Restriction on Liability

According to Proclamation No. 813/2013, trade secret infringement occurs when an individual discloses, holds, or uses information about another businessperson without the permission of the legitimate owner, in a manner contrary to honest commercial practice.[117] A contrary reading of this provision indicates that honest commercial practices do not constitute trade secret infringements. However, Proclamation No. 813/2013 does not provide specific defenses or acts that are considered honest commercial practices concerning trade secrets. In various jurisdictions, independent creation and reverse engineering are widely recognized as defenses against trade secret protection. Reverse engineering is an approach utilized to understand the physical and functional attributes of a product with the aim of replicating or redesigning the original.[118] It typically involves the analysis of an existing product to understand and reconstruct it. Independent creation refers to the development of a similar product by the defendant without

[117] TCCPP (n 94) Art. 8

[118] Bhavna Hariharan , 'Reverse Engineering' in M Augier and D J Teece (eds), The Palgrave Encyclopedia of Strategic Management (Palgrave Macmillan 2018)

access to or reference from the plaintiff's trade secret.[119] This approach entails developing a product independently without copying or misappropriating another's trade secrets. Unlike reverse engineering, independent creation does not involve the examination or referencing of an existing product.

3.3.1.4. Enforcement of Trade Secrets Rights

3.3.1.4.1. Evidence-Gathering and Preservation

Trade secret cases present distinctive challenges unique to other forms of intellectual property litigation.[120] Obtaining proof in a trade secret case is an inherent challenge for the owners.[121] Trade secret cases present distinctive challenges unique to other forms of intellectual property litigation.[122] Unlike other forms of intellectual property, trade secrets are not registered with the government authorities. Rather, they are nonpublic and hidden information. Recognizing evidence gathering and preservation rules is the touchstone for trade secret enforcement. Evidence gathering and preservation rules include ex-parte emergency search to preserve and obtain proof, pre-trial discovery, and the prima facie evidence rule.

Emergency pre-trial procedures to preserve evidence, commonly known as "Anton Piller" orders, permit a party to gain ex parte authorization to search a potential defendant's premises and seize pertinent evidence before a case officially begins.[123] The core purpose of an Anton Piller order is to act as a preventive measure, allowing one party to secure crucial information or assets in situations where the defendant might destroy them upon learning that legal action is underway.[124] An Anton Piller order obtained ex parte or without notice to defendant with aim to preserve and seize evidence that is at risk of destruction or concealment. In contrast, pre-trial

[119] Douglas .and Schultz (n 23)

[120] Charles Tait Graves and Brian D. Range, 'Identification of Trade Secret Claims in Litigation: Solutions for a Ubiquitous Dispute' (2006) 5 Northwestern Journal of Technology and Intellectual Property 68

[121] WIPO guide to trade secrets and innovation (n 21)

[122] Graves and Range (120)

[123] Douglas .and Schultz (n 23)

[124] N. H. Andrews, 'Abuse of Anton Piller Orders' (1987) 46 the Cambridge Law Journal 50.

discovery conducted in the presence of both parties to exchange evidence or gather evidence for trial. In this procedure, the opposing party or defendant is obligated to cooperate. During pre-trial discovery, parties can request and obtain documents, physical evidence, submit written questions, conduct depositions, and engage in information exchange or other methods to collect such evidence.[125] The prima facie evidence rule is the preliminary evidence that appear to be sufficient to establish a legal claim unless disproved by the opposing party. The core purpose of prima facie evidence rule is to ease burden of proof.

Proclamation No. 813/2013 does not incorporate these evidence gathering and preservation rules. Many trade secret infringement applications have been rejected because of the difficulties related to evidence collection.[126]Article 41 of the proclamation provides for the application of civil and criminal procedure codes on matters adjudicated pursuant to this proclamation. The Ethiopian Civil Procedure Code lacks provisions for emergency pre-trial procedures aimed at preserving evidence, as well as pre-trial discovery or prima facie evidence rules specifically designed to regulate trade secrets. The Code does not recognize any of these evidence gathering and preservation rules or of burden of proof easing rules. Parties must rely on general evidence production rules and request the court to order the production of documents after the trial has begun. However, this process is slow, formal, and vulnerable to the concealment or destruction of trade secret evidence prior to compliance.

The Ethiopian Criminal Procedure Code does not incorporate pre-trial discovery rules. Although the Code includes provisions for the search and seizure of evidence, they are not specifically designed to regulate trade secrets. Article 32 of the Code authorizes the police to search and seize properties. Furthermore, Article 36 (3) of Proclamation No. 813/2013 empowers the adjudicative bench to issue a search and seizure order in accordance with the Criminal Procedure Code. First, the Criminal Procedure Code provisions are designed for tangible evidence, such as weapons or stolen goods, rather than digital files or confidential information. There is limited forensic evidence in digital theft. Second, digital files or confidential information requires immediate action, as a search requires a warrant, which may allow suspects time to delete or alter

[125] Douglas .and Schultz (n 23)

[126] Interview with Ato Natinael Teferi, prosecuting officer at the Ministry of Trade and Regional Integration anti-competitive prevention division (Addis Ababa, Ethiopia, October 11 2024)

confidential information. Speed is crucial in trade secrets cases, but the provisions under the Criminal Procedure Code are not designed in a way to fulfill this urgency.

The provision permits a search without a warrant only in two circumstances, which are not applicable to trade secrets cases. According to Article 32 (2) (b) of the Criminal Procedural Code, a search without a warrant is allowed only for offenses punishable by more than three years. The punishment for a breach of confidentiality obligation under Article 401 of the Ethiopian Criminal Code is simple imprisonment not exceeding one year, while for unfair competition under Article 719 of the Code, it is simple imprisonment for not less than three months. Thus, the search and seizure provisions under the Ethiopian Criminal Procedure Code are limited in scope and less effective for trade secrets cases.

Ethiopian copyright and trademark laws have incorporated provisional measures to preserve the evidence. Under Ethiopian copyright and trademark laws, the court authorized to grant the evidence preservation order on an ex parte basis to avoid the risk that a defendant would destroy the relevant evidence. Both proclamations provided the following rules related to the preservation of evidence:

> *The court shall order prompt and effective provisional measures to preserve relevant evidence in regard to the alleged infringement'* [...]
>
> [And] '*the court shall have the power to adopt provisional measures, in audita altera parte where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.*[127]

Unlike the USA pre-trial discovery procedure, China provides a prima facie evidence rule to ease the plaintiff's burden of proof. Article 32 of Chinese anti-unfair competition law prescribes the following:

[127] Copyright and Neighboring Rights Protection proclamation (CNRPP), 2004, Art. 33, Proclamation No. 410, Negarit Gazette year 10, No.55.

See also Trade Mark Registration and Protection Proclamation (TRPP), 2006, Art. 39, Proclamation No. 501, Negarit Gazette year 12, No.37.

> *if the right owner adduces preliminary evidence reasonably demonstrating that the trade secret has been infringed and provides one kind of the following evidence, then the alleged infringer shall prove that it did not commit infringing act:*
> *(1) Evidence demonstrating that the alleged infringer has channel or opportunity to acquire the trade secret and the information used by the alleged infringer is substantively the same as the trade secret;*
>
> *(2) evidence demonstrating that the trade secret has been disclosed or used, or is at risk of being disclosed or used;*
>
> *(3) other evidence demonstrating that the trade secret has been infringed by the alleged infringer.*[128]

According to Article 32 of the Chinese Anti-Unfair Competition Law, if owners of trade secrets have preliminarily proven the existence of infringement based on the aforementioned three facts, the burden of proof will shift to the defendant. This provision significantly reduces the plaintiff's burden of proof and improves the trade secret enforcement.

Regarding trade secrets jurisdiction, Trade Competition and Consumer Protection Proclamation No.813/2013 dictates the establishment of institutions tasked with investigating, prosecuting, and adjudicating administrative, criminal, and civil cases pertaining to competition and consumer-related issues. Regarding investigations, Article 36 of the Proclamation stipulates that the Trade Competition and Consumer Protection Authority is responsible for conducting investigations when an offense involving administrative or criminal liability has occurred. Furthermore, Article 37 of the Proclamation specifies that the Authority's prosecutors are empowered to initiate criminal and administrative actions.

However, Article 22 of the Federal Attorney General Establishment Proclamation No. 943/2016 transferred the Authority's criminal investigation powers to the Federal Police Commission and its criminal prosecution powers to the Federal Attorney General. Additionally, Article 22 of the Definition of Powers and Duties of the Executive Organs Proclamation No. 1263/2021 reassigns powers and duties, excluding adjudication, from the Authority to the Ministry of Trade and Regional Integration. The Ministry's anti-competitive prevention division retains investigation and prosecution powers only over administrative cases.

[128] Chinese Anti- unfair competition law (n 100)

Concerning adjudication authority, Articles 32, 33, and 39 of the Proclamation confer first-instance jurisdiction over civil and administrative cases to the Trade Competition and Consumer Protection Adjudicative Bench, while appellate jurisdiction is vested in the Trade Competition and Consumer Protection Appellate Tribunal. The appellate tribunal's decision is final; however, regarding the issue of law a party dissatisfied with the decision may appeal to the Federal Supreme Court. The adjudication of criminal cases falls under the jurisdiction of the ordinary courts. Article 41 of the proclamation mandates the bench and appellate tribunal to apply civil and criminal procedure laws in deciding the case.

Therefore, the Ministry of Trade and Regional Integration's anti-competitive prevention division holds investigation and prosecution powers over administrative cases, whereas adjudication authority over civil and administrative cases is entrusted to the trade competition and consumer protection adjudicative bench and the appellate tribunal at the appellate level.

3.3.1.4.2. Protection of Trade secrets in the Course of Litigation

Bringing a lawsuit to court may expose trade secrets to the risk of losing confidentiality. The plaintiff has the burden of proving the existence of trade secrets, and the evidence submitted by the plaintiff to prove the existence of trade secrets may expose confidential information.[129] Providing protective measures that mitigate the risk of trade secret disclosures during litigation is the touchstone of trade secret enforcement. Protective measures include, but are not limited to, holding a hearing in the camera, sealing documents that contain trade secrets, restricting access or review of documents that contain trade secrets, and physically keeping or locking documents in safe custody.

The adoption of protective measures is important for ensuring the secrecy of information during litigation. The absence of protective measures could discourage the owner of trade secrets from bringing a lawsuit and put the owner in a dilemma “between not filing a suit and allowing a single competitor to exploit one’s secret and filing a suit and exposing the secret to all

[129] Douglas and Schultz (n 23)

competitors."[130] The laws of many jurisdictions, such as the USA and Uganda, recognize the protective measures that protect against the disclosure of trade secrets during court proceedings. However, there is no legal provision under Proclamation No 813/2013 that provides protective measures to ensure the secrecy of information during litigation. The absence of protective measures can affect the effectiveness of trade secret protection in Ethiopia. There is no protective measure during court proceedings; hence, there are no specific procedural rules applicable to unfair competition cases in general and trade secret cases in particular.[131] Thus, the court applied existing Ethiopian procedural laws. [132]

The Ethiopian Criminal and Civil Procedure Codes do not address the circumstances in which closed hearings are conducted. The right to a public trial is constitutionally guaranteed under Article 20(1) of the FDRE Constitution, except in cases where it is necessary to protect privacy, public morals, and national security. Article 32 of Federal Courts Proclamation No. 1234/2021 similarly aligns with the FDRE Constitution's provisions. The exceptional circumstances outlined in these two pieces of legislation serve as a general principle, necessitating the enumeration of detailed rules within the relevant procedural laws. However, both the Civil Procedure Code (1965) and the Criminal Procedure Code (1961) were enacted prior to the promulgation of the FDRE Constitution and Federal Courts Proclamation No. 1234/2021. Although its scope is limited to restructuring proceedings, Article 623 of Commercial Code introduces a best practice by mandating that information exchanged during such proceedings remain confidential and that the proceedings be held in camera.[133]

3.4. Protection of Trade Secrets under the Ethiopian Criminal Code

The ever-increasing tendency toward trade secret misuse requires criminal punishment, which has a potential deterrence effect. Infringement of trade secrets may cause irreparable damage to the owner, because infringement of trade secrets would entail a loss of secret forever. Civil

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[130] Ibid

[131] Interview with, Ato Kidane Tsageye, judge at the Trade Competition and Consumer Protection Administrative Court (Addis Ababa, Ethiopia, October 17, 2024)

[132] Ibid

[133] The Commercial code of FDRE, 2021, Art. 114, proclamation No. 1243, Negarit Gezette year 27, No.23.

remedies are insufficient to compensate for owners' losses. Thus, to supplement civil remedies, criminal prosecution is necessary to deter and punish misappropriation of trade secrets.

Concerning the criminalization of trade secrets misappropriation, breach of confidentiality obligation, and unfair competition are the two main offences prohibited under the Ethiopian criminal code. A breach of confidentiality obligation refers to the act of a person holding trade secrets through employment relations, trade relations, licensing agreements, or other legal means. Criminal liability with respect to a breach of duty applies only to parties who have a relationship with the trade secret owner and a duty to retain their secrets. Ethiopia's revised 2004 Criminal Code criminalized the disclosure of scientific, industrial, or trade secrets in breach of confidentiality obligations.

In this regard, Article 401 of Ethiopia's revised 2004 Criminal Code states:

> *Whoever, in violation of his legal, contractual, or occupational obligation, discloses an economic, scientific, or technological development or information, industrial or trade or scientific secret or scientific method of its application, to a person to whom he is not expected so to do, with intent to cause prejudice to its owner or the possessor, or to derive an advantage from it for himself or another, is punishable with simple imprisonment not exceeding one year, and fine not exceeding ten thousand Birr.*

Moreover, Article 719 of Ethiopia's revised 2004 Criminal Code criminalized the act of unfair competition. This provision is not specifically aimed at trade secrets; rather, it regulates general rules of unfair competition. This provision applies only to businesspersons or competitors. Article 719 of Ethiopia's revised 2004 Criminal Code prohibits businesspersons from engaging in the following activities with respect to trade secrets:

> *Granting or offering undue benefits to the servants, agents or assistants of another, in order to induce them to fail in their duties or obligations in their work or to induce them to discover or reveal any secret of manufacture, organization or working;'.*[134]
> [...]
> [And]'*Revealing or taking advantage of such secrets obtained or revealed in any other manner contrary to good faith, is punishable, upon complaint, with a fine of*

[134] The Criminal code of FDRE, 2004, Art. 719, Proclamation No. 414, Negarit Gezatte Year 9, No.2.

> *not less than one thousand Birr, or simple imprisonment for not less than three months.*[135]

The scope of Ethiopian criminal code provisions is limited. Ethiopia's criminal code does not sanction third-party misappropriations. The theft provision provided under Article 665 of the Ethiopian Criminal Code applies only to tangible movable properties or things detached from immovable properties. The intangible nature of trade secrets limits the application of theft provision in trade secrets misappropriation. Unlike other jurisdictions, the concept of abstraction in Article 665 indicates to tangible movable properties.[136] The TRIPS agreement prohibits trade secret misappropriation by third parties. TRIPS Agreement broadly elaborates unfair commercial practices related to trade secrets misuse as a breach of contract, breach of confidence, and inducement to breach, and includes the acquisition of undisclosed information by third parties.[137] In many jurisdictions, criminal law is sanctioned third-party misappropriation. For instance, Chinese criminal law provides the following:

> *Acquiring a trade secret of another by theft, inducement, duress, or other illegal means;*
>
> *disclosing, using, or allowing others to use a trade secret of another acquired by the above illegal means;*
>
> *disclosing, using, or allowing others to use a trade secret in breach of an agreement or a confidentiality obligation imposed by a legal owner; or*
>
> *acquiring, using, or disclosing a trade secret by a third party, when he knew or should have known that the trade secret has been misappropriated in any of the aforementioned ways.*[138]

Apart from the limited scope, the criminal liability imposed under Articles 401 and 719 of the Ethiopian Criminal Code with respect to breaching confidentiality obligations and unfair competition is insufficient to deter potential offenders. The punishment provided with respect to a breach of confidentiality obligation under Article 401 is a simple imprisonment not exceeding

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[135] Ibid

[136] Elias N. Stebek, *Principles of Ethiopian Criminal Law* (Revised edition AAU 2022)

[137] TRIPS (n 20)

[138] The criminal law of People's Republic of China 1997, section 7 Art 219

one year and a fine not exceeding ten thousand Birr. The penalty provided with respect to unfair competition under 719 is a fine of not less than one thousand Birr or simple imprisonment for not less than three months.

The punishment under both provisions is not severe and the deterrent effect of the law is questionable. In this case, the offender is willing to take the risk because it can make large profits at a low cost or with less punishment. The criminal punishment with respect to infringement of other intellectual properties such as trademarks, industrial designs or models, patents, and copyrights, Articles 720 and 721 of Ethiopia's criminal code provide rigorous imprisonment of up to ten years, which is much higher than the infringement of trade secrets. Moreover, both Ethiopian Copyright and Neighboring Rights Protection Proclamation No. 410/2004 and Ethiopian Trade Mark Registration and Protection Proclamation No. 501/2006 provide rigorous imprisonment of not less than five years and not more than ten years.[139]

However, regarding the consequences of infringement, trade secrets are not comparable to other forms of intellectual property. Because other forms of intellectual property can survive infringement, whereas trade secrets cannot survive, once a secret is disclosed, it is lost forever.[140] Thus, the current criminal liability under the Ethiopian Criminal Code is inadequate for protecting trade secrets. In general, certain types of misconduct are outside the scope of criminalization under the Ethiopian criminal code. It does not provide a comprehensive legal framework to address criminal liability with respect to trade secret misuses by third parties. Moreover, the criminal liability provided under the Ethiopian Criminal Code is insufficient to deter potential offenders.

[139] CNRPP No.410/2006 (n 127) Art. 36
See alsoTRPP No. 501/2006 (n 127) Art. 41

[140]Sy Jr. & L. Sy (n 2)

3.5. Protection of Trade Secrets under Other Relevant laws

3.5.1. Protection of Trade Secrets under Ethiopian Contact Law

To secure their trade secrets, the owners use two common types of the restrictive agreements: non-compete agreement and non-disclosure agreement.[141] These two types of the restrictive agreements are crucial in commercial and employment relationships.

A non-disclosure agreement is a contract in which the contracting parties promise not to disclose or use trade secrets. Such agreements are entered into by a diverse array of parties, including employers, employees, independent contractors, business partners, vendors, and customers—essentially any entity seeking to share or receive information under conditions of confidentiality.[142] A non-compete agreement is a contract designed to prevent the recipient of certain information from engaging in competition after the information is shared. [143] If the recipient is an employee, they are barred from working for or establishing a rival company within the same industry for a specified duration.[144] In contrast, non-disclosure agreements (NDAs) do not explicitly restrict employees from competing or forming employment relationships with competitors. Instead, these confidentiality agreements require the recipient to refrain from disclosing or using any information deemed "confidential" by the contract, except when authorized.[145]Even if non-disclosure agreements (NDAs) do not restrict employee mobility, the duty of employees to keep trade secrets confidential and not use them is perpetual or everlasting. Unlike non-compete clauses, NDAs typically do not have restrictions based on geography or duration.[146]

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[141] Matthew K. Miller, 'Inevitable Disclosure Where No Non-Competition Agreement Exists: Additional Guidance Needed'(2000).6 Boston University Journal of Science & Technology Law

[142] Camilla A Hrdy & Christopher B Seaman, 'Beyond Trade Secrecy: Confidentiality Agreements that Act Like Non competes' (2024) 133 Yale Law Journal 669

[143] Ibid

[144] Ibid

[145] Ibid

[146] Ibid

Article 2589 of the Ethiopian Civil Code acknowledges the validity of non-compete agreements that restrict employees from engaging in competition or establishing employment relationships with competitors. According to this provision, a non-compete clause is enforceable only if the agreement is explicitly stated and made in writing. However, non-compete agreements are subject to certain limitations. Article 2580 of the Ethiopian Civil Code stipulates that such agreements are valid only if they are necessary to protect the legitimate interests of the employer, do not unjustly hinder the economic prospects of the employee, and are appropriately restricted in terms of duration, geographical scope, and business activities. This provision imposes significant limitations.

Concerning non-disclosure agreement in Ethiopia, trade secret owners generally rely on general rules and principles of contract law. Entering an obligation not to do something is enforceable under Ethiopian contract law. Article 1712(1) of the Ethiopian Civil Code clearly states that "the party may undertake to procure to the other party a right on a thing or to do or not to do something." When contracting parties are bound by a contractual obligation to not disclose trade secrets, a breach of this obligation could establish a cause of action and entail contractual liability. However, the contract law has certain limitations in terms of its practical effectiveness. The contract law provides protection only if there is a confidentiality obligation in the contract. If no contract exists, there are no legal grounds for protecting trade secrets. Furthermore, contract law is only effective against parties that have contractual relationships with the trade secret owner, and does not prevent a third party from using or disclosing trade secrets.

In the absence of an agreement, trade secret law is employed to limit employee conduct in cases of actual or potential trade secret misappropriation.[147] The doctrine of inevitable disclosure pertains to situations in which there is neither actual nor threatened misappropriation.[148] In cases where misappropriation is deemed inevitable, a court may issue an injunction to prevent an employee from joining a competitor of the former employer. This can occur even in the absence of a non-competition agreement or any proof of actual or threatened misappropriation, provided

[147] Matthew K. Miller, 'Inevitable Disclosure Where No Non-Competition Agreement Exists: Additional Guidance Needed'(2000).6 Boston University Journal of Science & Technology Law

[148] Ibid

that the employer demonstrates a real and imminent risk of disclosure[149]. Thus, contract law is applicable only when there is contractual agreement; if there is no contractual agreement, intervention of trade secrets law becomes necessary.

3.5.2. Protection of Trade Secrets under Ethiopian Commercial Law

Concerning unfair competition and intellectual property rights, the Ethiopian Commercial Code refers to the civil code and special law. The commercial code states that a trader may claim damages under Article 2057 of the Civil Code from any person who commits an act of competition that amounts to fault.[150] However, the scope of unfair competition enshrined under Article 2057 of the Civil Code is not broad enough to accommodate trade secret violations and it confined only to false statements or unjustifiable allegations that discredit competitors' products. Furthermore, Article 115 of the Commercial Code states that the relevant provisions of the Civil Code and special laws apply to the administration of a trader's trade name, trademarks, and intellectual property rights.

Concerning the relationship between a principal and a commercial agent, the Ethiopian Commercial Code imposes a duty on a commercial agent not to disclose trade secrets disclosed to him by the principal or learned during its agency duties. Article 44(3) of Ethiopian Commercial Code provides that upon termination of the agency agreement, a commercial agent may not take advantage of or disclose trade secrets revealed to him by the principal or learned during its agency duties. Following the termination of an agency agreement, a commercial agent is prohibited from using or disclosing any confidential information disclosed to him by the principal or learned while carrying out its agency duties. The commercial code also prohibited a commercial agent from conducting a trade, similar to the trade carried out by the principal. 'The agency agreement may be canceled and damages may be due where the agent carries on a trade similar to the trade carried out by the principal'.[151] This provision applies only to the relationship between a principal and commercial agent. It is specifically tailored to address the role of commercial agents. The provision addresses commercial agents by prohibiting them from

[149] Ibid

[150] The Commercial code of FDRE, 2021, Art. 114, proclamation No. 1243, Negarit Gezette year 27, No.23.

[151] Ibid Art. 45

disclosing trade secrets acquired while performing their duties. This provision helps in specific contexts (commercial agencies) but may not cover general protections encompassing different parties that are involved in the multiple commercial transactions. The commercial code governs various commercial transactions involving multiple parties or commercial partners. However, the protections offered by the Code are limited in scope and may not be adequate to safeguard trade secrets.

3.5.3. Protection of Trade Secrets under Ethiopian Labor Law

Employment law is relevant to trade secret protection and plays a vital role in regulating trade secrets in employer-employee relationships. Most trade secrets are obtained by workers during their employment and are subsequently used by them or their future employers.[152]An increase in employee mobility increases theft of trade secrets.[153] The theft of trade secrets is a growing concern in several industries, and employees remain a major threat because departing employees freely join a competitor company and current employees are employed with a competitor on a part-time basis.[154] In many states, labor law imposes a mandatory or fiduciary obligation on an employee to maintain the confidentiality of the employer's trade secrets, and a breach of this obligation entitles the employer to terminate the employee without notice.

Articles 13 and 14 of Ethiopian Labor Proclamation exhaustively list the obligations of employees and unlawful or prohibited acts.[155] Nevertheless, the proclamation does not mandate employees to uphold the confidentiality of their employer's trade secrets, nor does it provide trade secret misappropriation by employees as an unlawful act. In Ethiopia, the Labor Proclamation No. 1156/2019 primarily regulates labor relations. However, the Civil Code of 1960 (Book V, Title XVI, Articles 2512–2593) still contains provisions regarding employment

[152] William J. McCabe, 'Protection of Trade Secrets in Florida: Are Present Remedies Adequate' (1972) 24 Florida Law Review 721

[153] David S. Almeling, 'seven reasons why trade secrets are increasingly important' (2012) 27 Berkeley tech nology law Journal 1091

[154] Interview with Ato Ephrem Hailu, general manager at the EMECCE Engineering and Agro-Industry Private Limited Company (Addis Ababa, Ethiopia, October 12, 2024)

[155] Labour Proclamation , 2019, Proclamation No. 1156, Negaret Gazette year 25, No.89.

contracts. These provisions are applicable when the Labor Proclamation is silent or for categories of workers that are not explicitly covered by labor legislation. The Civil Code provisions on employment contracts serve a supplementary role or address gaps where the Labor Proclamation does not regulate a specific issue. Article 192(2) of Labor Proclamation No. 1156/2019 indicates that other laws are applicable to labor relations as long as they are consistent with this proclamation. Therefore, Article 2533 of the Civil Code imposes an obligation on employees to maintain the confidentiality of their employers' trade secrets.

Furthermore, the proclamation does not expressly provide trade secret misappropriation by employees as lawful grounds for terminating employment contracts. Nevertheless, Article 27(2)(d) of Ethiopia's labor proclamation provides general provision, which states that 'a contract of employment shall be terminated without prior notice where a worker misappropriates the property or fund of the employer with the intent to procure for himself or to a third-person unlawful enrichment.' Ethiopia's Federal Supreme Cessation Bench broadly interprets the term property prescribed under Article 27 of Ethiopia's labor proclamation.[156] As per the cessation bench interpretation, property means the thing that has economic value and that could be possessed as wealth. As per the cessation bench interpretation, the term property provided under Article 27 of Ethiopia's labor proclamation is broad enough to include intangible properties, such as goodwill. The application of Article 27(2) (d) of Ethiopia's labor proclamation on trade secret misappropriation cases presupposes a clear recognition of trade secrets as property under the Ethiopian legal system.

[156] Admas College V Solomon Mulualem (Civil file 34669, Federal Supreme Court Cessation Division, Vol 8, P 134

See also Dashen Bank S.C V Hailu Shimelis (Civil file No. 64988, Federal Supreme Court Cessation Division, Vol 11, p 224

3.5.4. Protection of Trade Secrets under Ethiopian Tax Law

The federal tax administration proclamation No. 983/2016 has enacted to harmonize the federal's tax administration framework and it establishes the legal framework for tax assessment, collection, enforcement, and the rights and obligations of taxpayers. It applies all federal taxes administered by federal government such as VAT, Excise tax, Federal stamp duty, federal income and other federal taxes.

The proclamation No.983/2016 2016 protects confidential business information submitted to the tax authority. The Proclamation obliges tax officials not to disclose any information obtained in the course of their official functions. Article 8 of this proclamation stipulates, "any tax officer shall maintain the secrecy of all documents and information received in his official capacity". This provision broadly applies to any document or information filed for tax purposes. Tax officer includes a member or former member of the Advisory Board of the Authority, a person employed or engaged by the Authority in any capacity including as contractor; and a former officer, employee, or contractor of the Authority. Disclosure is permitted in specific circumstances, such as: when required by a court order, law enforcement agencies, auditory general, tax authority for purposes of tax administration, enforcement, or collection, and when sharing information with another government body legally entitled to access it, etc. Proclamation No. 983/2016 ensures that confidential business information submitted for tax purposes remain protected by imposing confidentiality duties on tax officials, limiting disclosure to lawful circumstances.

Article 79 of the federal income tax proclamation no 979/2016 authorized the ministry of finance to issue directive concerning transfer pricing. Accordingly, the ministry of finance issue transfer pricing directive No. 981/2024. The directive imposes obligation on the tax authority to maintain the secrecy of trade secrets submitted to it in the course of an advance pricing arrangement proceeding. Article 12 (8) of the directive provides that 'the Tax Authority shall insure the confidentiality of trade secrets and other sensitive information and documentation submitted to it in the course of an advance pricing arrangement proceeding'. While Article 8 of the Federal Tax Administration Proclamation No. 983/2016 establishes general confidentiality provision, directive No. 981/2024 specifically addresses trade secrets within the context of transfer pricing.

3.6. Protection of Test Data under Ethiopian Proclamation No.1112/2019 and Proclamation No. 674/2010

The protection of trade secrets obligates not only individuals but also governmental or regulatory authorities to safeguard test data submitted for marketing approval. Trade secrets comprise both technical information, including information related to manufacturing processes, test data, and designs and drawings of computer programs, and commercial information, including distribution methods, lists of suppliers and customers, and advertising strategies.[157] The TRIPS Agreement recognizes test data protection as a form of protection against unfair competition in the section on protection of trade secrets. The TRIPS Agreement imposes an obligation on WTO members to prevent unfair commercial use and the unauthorized disclosure of confidential information or test data submitted to a regulatory authority, subject to public health or safety conditions. Article 39(3) provides that when 'Member States require the submission of undisclosed test data involving "considerable effort" for marketing approval of pharmaceutical or agricultural chemical products utilizing "new chemical entities," they must protect such data against "unfair commercial use" and against "disclosure" except where necessary to protect the public'.

The interpretation or scope of protection under Article 39(3) of TRIPS Agreement has been subjects of debate among the WTO's members and scholars.[158] The debate surrounding Article 39(3) of TRIPS Agreement gives rise to two main interpretations. The data exclusivity interpretation supported by developed countries like EU and US argued that Article 39(3) TRIPS Agreement obliged the members to grant the data exclusivity where regulatory authorities cannot rely on the originator's data to approve generic products for a certain period[159]. On the other hand, other interpretation states that Article 39(3) TRIPS Agreement does not requires data

[157] WIPO <https://www.wipo.int/en/web/tradesecrets>

[158] Gabriele Spina Ali, 'The 13th Round: Article 39(3) TRIPS and the struggle over "Unfair Commercial Use' (2018) 21 The Journal of World Intellectual Property 201

[159] Ibid

See also Carlos M Correa, 'Interpreting the Flexibilities Under the TRIPS Agreement' in Carlos M Correa and Reto M Hilty (eds), Access to Medicines and Vaccines: Implementing Flexibilities Under Intellectual Property Law (Springer International Publishing 2022) exclusivity, rather it only require the members to prevent unfair commercial use and the unauthorized disclosure of test data.[160]

With respect to Ethiopia legal system, Ethiopian Food and Medicine Administration Proclamation No.1112/2019 provides the legal framework for the regulation of food, medicines, cosmetics, medical devices, and tobacco products. The proclamation mandates the Ethiopian Food and Drug Authority (EFDA) to regulate safety, efficacy, and quality of these products. Product regulation includes licensing, inspection, registration, lab testing, clinical trials, post-marketing surveillance, etc.).

Article 20 of this proclamation states that ‘any medicine and medical device shall not be manufactured, imported, exported, stored, distributed, transported, sold, hold, used, or transfer to any other person without registration and marketing authorization’. According to article 69 (2) of this proclamation, every manufacturer, importer, or distributor of a regulated product shall have the responsibility to furnish, any information regarding the quality, safety, effectiveness of the product, and other related matters to the regulator authority. To obtain marketing approval, manufacturers of pharmaceutical products must submit data proving safety, efficacy, and quality of the products to regulatory authority. However, Proclamation No. 1112/2019 does not address “test data protection, there is no provision ensuring test data protection against “unfair commercial use” and against “disclosure.

Regarding agricultural chemicals, Ethiopian Pesticide Registration and Control Proclamation No. 674/2010 establishes a legal framework for the manufacture, import, distribution, sale, use, disposal, and control of pesticides in Ethiopia, and empowers the Ministry of Agriculture to register pesticides, ensuring the effectiveness, safety and quality of pesticides before approval. Article 3 of this proclamation provides that no pesticides shall be registered unless the effectiveness, safety and quality is tested and approved by the Ministry of Agriculture. In order to examine the effectiveness, safety and quality of pesticides, the regulatory authority would require the manufacturer to provide the relevant data. However, the proclamation does not provide any provision for protecting test data as confidential or exclusive information. Generally, Ethiopian legal regimes do not provide test data protection for pharmaceutical products and agricultural chemicals.

[160] Ibid

CHAPTER 4

CONCLUSION AND RECCOMENDATION

4.1. Conclusion

Trade secrets are essential assets for commercial entities to operate successfully in competitive markets. The misappropriation of trade secrets can cause irreparable damage to owners and threaten the survival of their businesses. Unlike other forms of IP, infringement or disclosure of a trade secret entails the loss of the secret forever.

Ethiopia has no single, dedicated trade secrets law; instead, embedded in multiple fragmented statutes, including tort or antitrust law, employment law, contract law, and commercial law. This fragmented legal framework creates significant limitations in terms of its scope, clarity, certainty, consistency, and enforceability. Such statutes fail to delineate what constitutes a trade secret, what actions amount to misappropriation, and do not provide specific remedies tailored to address trade secret misappropriation, as well as procedural safeguards that ensure the confidentiality of information during litigation and the rules for evidence gathering and preservation or easing the burden of proof.

There is no single legislation defining trade secrets in Ethiopia. Ethiopian law does not clearly define what kind of information constitutes a trade secret. The exact scope of protection is unclear, and ambiguity exists regarding whether test data, know-how or technical information is included. Additionally, fragmented statutes do not precisely delineate what constitutes a trade secret misappropriation or widely accepted defenses such as reverse engineering and independent creation.

Under the Ethiopian legal regime, civil remedies may include damages but rely on general tort provisions. Ethiopian tort law only recognizes compensatory damages and does not recognize punitive or exemplary damages for willful misappropriation. Under Ethiopian tort law, compensatory damages are only assessed in the form of actual loss, but it does not provide modern mechanisms tailored to trade secrets, such as the defendant's unjust enrichment or reasonable royalty as alternative methods for calculating damages. The Ethiopian legal regime does not expressly provide for other civil remedies, recall and destruction of infringing products, or delivery or seizure.

Concerning criminal remedies, Ethiopia's criminal code does not sanction third-party misappropriations. Beyond the limited scope, the criminal liability imposed for breaching confidentiality obligations and engaging in unfair competition is insufficient. The punishment for breaching confidentiality obligations is simple imprisonment not exceeding one year and a fine not exceeding ten thousand Birr, while for unfair competition, it is a fine of not less than one thousand Birr or simple imprisonment for not less than three months.

Moreover, fragmented statutes do not provide procedural safeguards that ensure the confidentiality of information during litigation, and the evidence-gathering and preservation rules include ex parte emergency searches to preserve and obtain proof (Anton Piller), pre-trial discovery, and prima facie evidence or burden of proof easing rules. Ethiopian legal regimes, particularly the Ethiopian Food and Medicine Administration Proclamation No.1112/2019 and the Ethiopian Pesticide Registration and Control Proclamation No. 674/2010, do not provide test data protection for pharmaceutical products and agricultural chemicals, respectively.

In the preceding analysis, this thesis has shown that Ethiopia lacks a single, dedicated trade secrets law; instead, trade secret protection is dispersed across multiple fragmented statutes, including tort or antitrust law, employment law, contract law, and commercial law. Therefore, by analyzing these fragmented statutes, this thesis has shown that existing fragmented Ethiopian legal frameworks are not comprehensive in regulating trade secrets.

4.2 Recommendations

The above findings show that existing Ethiopian legal frameworks are not comprehensive in regulating trade secrets. Based on these findings, the following recommendations were made:

- Ethiopia should enact a comprehensive standalone legislation that regulates trade secrets.
- Upcoming legislation should define information that qualifies as trade secrets, and this definition should broadly accommodate commercial information, technical information, and/or know-how. Identifying the information that qualifies as trade secrets is the first important step in protecting trade secrets. The owner should be aware of the elements and scope of trade secret protection to claim it is misappropriated.
- The upcoming legislation should sanction breaches of confidentiality obligations and third-party misappropriations. The upcoming legislation should incorporate a full array of remedies, including damages, preliminary or permanent injunctions, recall and destruction of infringing products, and delivery or seizure. The assessment of damages should consider the lost profits of the trade secret holder, unfair profits made by the infringer, and, alternatively, the amount of royalties or fees that would have been due had the infringer requested authorization to use the trade secret in dispute.
- The upcoming legislation should recognize restrictions on lability, such as reverse engineering and independent creation.
- The upcoming legislation should adopt evidence gathering and preservation rules applicable to trade secret litigation, including ex parte emergency search to preserve and obtain proof.
- The upcoming legislation should also incorporate protective measures that ensure the confidentiality of trade secrets during court proceedings, including holding a hearing in the camera, sealing documents that contain trade secrets, restricting the access or review of documents that contain trade secrets, and physically keeping or locking documents in safe custody.
- The upcoming legislation should sanction and aggravate criminal punishment with respect to third-party misappropriation, breaches of confidentiality obligations, and unfair competition.
- The upcoming legislation should also incorporate the protection of test data for pharmaceutical products and agricultural chemicals.

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Appendix

በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
የፍትሕ ሚኒስቴር
The Federal Democratic Republic of Ethiopia
Ministry of Justice

የፍትሕ ሚኒስቴር
Ministry of Justice

ቁጥር Ref.No 000156
ቀን Date 21/9/2015

ዳኞች፦ ኪዳኔ ፀጋየ

መቅደስ መኩሪያ

ዮሐንስ አበበ

ከሳሽ .... ሚት ኢንጂነሪንግ ኃ/የተ/የግል/ማህበር ጠበቃ ተሾመ በላቸው ቀርበዋል

ተከሳሾች...........1ኛ ኑሪያ ሲራጅ የህንጻ መሳሪያዎችና የፋብሪካ ውጤቶች ንግድ

2ኛ አቶ ዮሴፍ ድንቁ

ስለ ሁለቱም ተከሳሾች ጠበቃ በሱ ፍቃድ አማረ ቀርበዋል፡፡

መዝገቡ ለዛሬ የተቀጠረው ለምርመራ ሲሆን ተመርምሮ የሚከተለው ፍርድ ተሰጥቷል ፡፡

ፍርድ

ለዚህ ፍርድ መነሻ የሆነው ከዚህ ቀደም ይህ ፍርድ ቤት በመዝገብ ቁጥር 000156 በቀን 25/12/2013 ዓ/ም በዋለው ችሎት ተከሳሾች ተገቢ ያልሆነ የንግድ ውድድር ተግባር አልፈጸሙም በሚል በነጻ እንዲሰናበቱ ውሳኔ ሰጥቶ የነበረ ቢሆንም ተከሳሾች ለንግድ ውድድርና ሸማቾች ጥበቃ ይግባኝ ሰሚ ፍርድ ቤት ይግባኝ ባሉት መሰረት ፍርድ ቤቱ በመዝገብ ቁጥር 00057 በቀን 08/06/ 2015ዓ/ም በዋለው ችሎት ተከሳሾችን ጥፋተኛ

Ministry of Justice Trade Competition & Consumers Protection Administration Court

ያላቸው ሲሆን በከሳሽ ላይ ጉዳት መድረስ አለመደረሱን በተመለከተ ግን ይህ ችሎት የግራ ቀኙን አከራክሮ የመሰለውን እንዲወስን በማለት መዝገቡን በነጥብ ለዚህ ስለ መለሰው ነው ፡፡

በዚህ መሰረት ከጉዳት ጋር በተያያዘ ከሳሽ በ ቀን 11 /3/ 2013 ዓ.ም ለችሎቱ ጽፎ ባቀረበው የክስ አቤቱታ ላይ የገለፀው ባጭሩ ሲታይ 1ኛ ተከሳሽ ከ 2/6/2007ዓ/ም ጀምሮ በከሳሽ ድርጅት ውስጥ በቴክኒሻንነት ሲያገለግሉ የነበሩትን አቶ ዮሴፍ ድንቁ ወይም 2ኛ ተከሳሽ የተባሉትን ሰራተኞችንን ከመጋቢት 2012 ዓ/ም ጀምሮ በማስኮብለል እና በመቅጠር በአዋጁ አንቀፅ 8 ንኡስ ቁጥር 2 /ረ/ የተደነገገውን በመጣስ ስለ ቪድዮ ጀት ምርት የንግድ መረጃዎችን በማግኘት ሳሊም ዋዛራ ያህያ ምግብ አምራች ኃ/የተ/የግ/ማህበር የግብር ከፋይ የመለያ ቁጥር 0031072499 የሆነውን ደንበኞችንን የወሰደና ተወዳዳሪነታችንን ለሚቀንስ ዓላማ ተጠቅሞ በድርጅታችን ላይ የብር 2175694.78/ሁለት ሚሊዮን አንድ መቶ ሰባ አምስት ሺ ስድስት መቶ ዘጠና አራት ከሰባ ስምንት ሳንቲም/ ጉዳት ደርሶብናል በመሆኑም ተከሳሾች በጋራ እና በተናጠል የጉዳት ካሳ እንዲከፍሉን የሚል ክስ ያቀረበ ሲሆን ክሱ ለማስረዳትም የሰው እና የሰነድ ማስረጃዎች ከክሱ ጋር አያይዞ አቅርቧል፡፡

ተከሳሾች በበኩላቸው የከሳሽ ክስ ከችሎት መጥሪያ ጋር ደርሶአቸው ታህሳስ 08 ቀን 2013 ዓ/ም በጋራ ጽፈው ባቀረቡት መልስ አመልካች በማስረጃ ያልተረጋገጠና ባልተረጋገጠ ጉዳት ብር 2175694.78/ሁለት ሚሊዮን አንድ መቶ ሰባ አምስት ሺ ስድስት መቶ ዘጠና አራት ብር ከ ሰባ ስምንት ሳንቲም/ መጠየቃቸው የህግ አግባብነት የሌለው ነው በሚል ምላሽ የሰጡ ሲሆን ከመልሳቸው ጋር 2ቱም ተከሳሾች በጋራ የሰው እና ያሰነድ ማስረጃዎች ከጽሁፍ መልሳቸው ጋር አያይዘው አቅርቧል ፡፡

ችሎቱም ይግባኝ ሰሚው ፍርድ ቤት በሰጠው ትዕዛዝ መሰረት ከሳሽ ጉዳት ደረሰብኝ ብሎ በክሱ ላይ ያቀረበውን 2175694.78/ሁለት ሚሊዮን አንድ መቶ ሰባ አምስት ሺ ስድስት መቶ ዘጠና አራት ከሰባ ስምንት ሳንቲም/ ሲሆን ችሎቱም ከዚህ ቀደም ይዞት በነበረው ጭብጥ ማለትም ከሳሽ በክሱ ላይ የገለፀው ከላይ የተገለፀው የገንዘብ መጠን ጉዳት ደርሶበታል ወይስ አልደረሰበትም የሚል ጭብጥ በመያዝ የግራ ቀኙ ክርክር እንዲያደርጉ አድርጓል፡፡ በዚህ መሰረት ከሳሽ ክርክሩን እንደሚከተለው አቅርበዋል፡፡

ይግባኝ ሰሚው ፍርድ ቤት 1ኛ እና 2ኛ ተከሳሾች በአንድነት እና በተናጠል ያልተገባ የንግድ ውድድር ተግባር የፈፀሙ መሆናቸው አረጋግጧል፡፡ ያልተገባ ተግባር ከተፈፀመ ደግሞ በከሳሽ

ላይ ጉዳት ደርሷል፡፡ ይህም በብር ሲገመት 2175694.78/ሁለት ሚሊዮን አንድ መቶ ሰባ አምስት ሺ ስድስት መቶ ዘጠና አራት ከሰባ ስምንት ሳንቲም/ ሲሆን ይህንን ያህል ብር ማጣታችን እና ጉዳት መድረሱን በ 2011ዓ/ም እና 2012 ዓ/ም ያለው የገቢ እና ትርፍ የሂሳብ መረጃ አያይዘን ያቀረብን ስለሆነ የጉዳት መጠኑ በዚሁ መሰረት ነው ፡፡ ሌላው 1ኛ እና 2ኛ ተከሳሾች በዚህ ችሎት ታህሳስ 8 ቀን 2012ዓ/ም ባቀረቡት መልስ ላይ ይህንን የጉዳት መጠን ያልተቋወሙ በመሆኑ የጉዳት መጠኑ እንዳመኑ የሚያረጋግጥልን ነው ፡፡ ስለዚህ በከሳሽ ላይ ጉዳት ደርሷል በማለት ተከሳሾች በአንድነት እና በተናጠል ከነወጪ እና ኪሳራው ከ 9 በመቶ ወለድ ጋር ይክፈሉ ተብሎ እንዲወሰንልን በሚል ተከራክረዋል፡፡

የተከሳሾች ጠበቃ በበኩላቸው የሚከተለውን የቃል ክርክር አድርገዋል ፡፡ በከሳሽ ላይ የደረሰ ጉዳት የለም ፡፡ ይህንንም የምንልበት ምክንያት ከሳሽ ጉዳት ደረሰብኝ የሚለው 1ኛ ተከሳሽ ቀድሞ ደንበኛየ ሳሌም ዋዝራ አስኮብልሎብኛል በሚል ነው ፡፡ ይህ ፍርድ ቤት ደግሞ ለትክክለኛ ፍትህ ሲባል ሳሌም ዋዝራ አስጠርቶ ምስክርነት የሰማ ሲሆን ድርጅቱ በሰጠው ምስክርነት ከሳሽ ድርጅት የዶላር እጥረት ሊያጋጥመው እንደሚችል እና የቪድዮ ጀት የተባለው ምርትም ለማቅረብ የማንችል ስለሆነ የውጪ ምንዛሬ ማግኘት የምትችሉ ከሆነ ከጅቡቲ ማምጣት ትችላላችሁ እንደተባሉ ለዚህ ችሎት ቀርበው አስረድተዋል፡፡ ከሳሽ ይህንን ቃል ከሰጠ በኂላ ከ 2ኛ ተከሳሽ ተገናኝቶ ቪድዮ ጀት የተባለውን ዕቃ እንደገዛ ለዚሁ ፍርድ ቤት አስረድቷል፡፡ ይህ የሚያሳየው 1ኛ ተከሳሽ የከሳሽን ንግድ ኪሳራ ወይም ጉዳት ለማድረስ በማሰብ እንዳልሆነ በግልጽ ያሳያል ፡፡ ከሳሽም ሆነ 1ኛ ተከሳሽ የንግድ ግንኙነት ነበራቸው፤በዚህም መሰረት የዶላር እጥረት ያለብን ስለሆነ በራሳችሁ ከጁቡቲ ማምጣት ትችላላችሁ ብሎ መረጃ የሰጠው ከሳሽ ራሱ ነው፡፡ ስለሆነም በ1ኛ ተከሳሽ በኩል ለመጉዳት ታስቦ የተደረገ አይደለም፡፡

ሌላው ከሳሽ ኪሳራችንን የሚያሳይልን የ2011ዓ/ም እና 2012 ዓ/ም የሂሳብ መግለጫ አያይዘን አቅርበናል ይበሉ እንጂ የሂሳብ መግለጫ በሚል የተገለፀ ሲሆን ለክርክሩ ምክንያት የሆነው ቪድዮ ጀት ሽያጭ እና ትርፍ በግልጽ የሚያሳይ አይደለም፡፡ በአጠቃላይ የሂሳብ መግለጫ በሚል ባቀረቡት ሰነድ ውስጥ ከሳሽ ድርጅት የሚሰራቸው ስራዎች ተብለው ከተገለፁት ውስጥ በኢንዱስትሪያል እና ኢንጅነሪን ማማከር፣ በዲዛይን እና ቁጥጥር ፕሮጀክት አመራር እና ከሽያጭ በኂላ አገልግሎት መስጠት በሚሉ የስራ መስኮች ላይ የተሰማራ ድርጅት ነው፤ አያይዞ ያቀረበው የሂሳብ ሰነድም አጠቃላይ የሚሰራውን ስራ እንጂ በክሱ ላይ የቀረበውን

ቪድዮ ጀት ሽያጭ እና ትርፍ የሚያሳይ አይደለም ። ስለሆነም በሰነድ ማስረጃነት ያቀረቡት ለቀረበው ክስ ምንም ዓይነት አስረጅነት ያለው ሰነድ አይደለም።

ሌላው ተከሳሽ የጉዳት መጠንን በተመለከተ በመጀመሪያው የጽሁፍ መልሳቸው ላይ ተቋውሞ አላቀረቡም ብለው ያቀረቡት በተመለከተ መክሰስ የለብንም ፤ያልተገባ ውድድርንም አላደረግንም በሚል ምላሽ የሰጠን ስለሆነ ስላልተቋወሙ እንዳመኑ ተቆጥሮ ይወሰን የሚለውም አግባብነት የለውም ። አሁን ያቀረብነው ክርክር ቢታለፍ እንኳን ከሳሽ ከመጋቢት ወር 2012 ዓ/ም ጀምሮ ደንበኞችን አስኮበለለ በሚል በክሳቸው ላይ ገልፀው እያለ እንዲሁም በሰው መስረጃም የገለፁት ይህንን ሆኖ እያለ ከሳሽ ድርጅት ኪሳራ ደረሰብኝ ብሎ ማቅረብ ያለበት የ 2012ዓ/ም የ6 ወር ወይም የ 5 ወር ነው ፤ ምክንያቱም የ 2011 ዓ/ም እና የ 2012 ዓ/ም ብለው ያቀረቡት የሽያጭ መጠን የሚያሳይ ሰነድ ለንጽጽር የቀረበ ነው ። ከሳሽ ኮበለለብኝ የሚሉት ድርጅት የረጅም ጊዜ የንግድ ግንኙነት ያላቸው ስለሆኑ አሁን ኪሳራ ደረሰብኝ የሚሉት የብዙ ጊዜ ማቅረብ ይችሉ ነበር ነገር ግን የደረሰ ኪሳራ ስለሌለ ነው ።

ሌላው ከሳሽ ተከሳሾች በነጠላ እና በአንድነት ይጠየቁ ያሉትን በተመለከተ 2ኛ ተከሳሽ የጉዳዩ አካል ሊሆን አይገባም ። 2ኛ ተከሳሽ መጠየቅ ካለበት በወንጀል ወይም በዓቃቢ ህግ እንጂ ክሳ ሊጠየቅ አይገባም ። ይግባኝ ሰሚው ፍርድ ቤትም 2ኛ ተከሳሽ በግልጽ ሊጠየቅ እንደሚገባ የሰጠው ውሳኔ የለም ። 1ኛ ተከሳሽ 2ኛ ተከሳሽን በመጠቀም ተገቢ ያልሆነ የንግድ ውድድር ተግባር እንደፈጸመ ነው ውሳኔ የሰጠው ፤ስለዚህ ተጠያቂ መሆን የለበትም በሚል የተከራከሩ ሲሆ ከሳሽ በሰጡት የመልስ መልስ የተከሳሾች ጠበቃ አሁን እያቀረቡት ያለው ክርክር አዲስ መከራከሪያ ነው ። ክርክር መቅረብ የሚገባው በቀረበው ክስ እና የፅሁፍ መልስ መሰረት መሆን እንዳለበት የሰበር ውሳኔዎች ያሳያሉ ። ስለዚህ የተከሳሾች ጠበቃ አሁን ያቀረቡት መከራከሪያ በጽሁፍ መልሳቸው ላይ ያልገለጹት አዲስ መከራከሪያ ነው ። የ2011ዓ/ም እና 2012 ዓ/ም ያቀረብነው የሰነድ ማስረጃ ለማነጻጸር ነው ያቀረብነው ነው ። ይኸውም ደንበኞችን ከመኮብለሉ በፊት ስናገኘው የነበረውን ለማነጻጸር እና ፍርድ ቤቱም በርትዕ ለመወሰንም እንዲጠቅም ነው በማለት ተከራክረዋል።

ችሎቱም የግራ ቀኙን ክርክር መሰረት አድርጐ ለጉዳዩ አግባብነት ካላቸው ህጐች ጋር በማገናዘብ መዝገቡን እንደሚከተለው መርምሯል ።

ከሳሽ በተከሳሾች ተገቢ ባለሆነ የንግድ ውድድር ተግባር ምክንያት 2175694.78/ሁለት ሚሊዮን አንድ መቶ ሰባ አምስት ሺ ስድስት መቶ ዘጠና አራት ከሰባ ስምንት ሳንቲም/ ጉዳት ደርሶብኛል በሚል ክስ ያቀረበ ሲሆን ለዚህ እንደማስረጃ ብሎ ያቀረበው ደግሞ የከሳሽ ደንበኛ የነበሩ በ1ኛ ተከሳሽ እንዲኮበልሉ ከተደረገ በኋላ በ 2011 ዓ/ም እና በ 2012 ዓ/ም ከሳሽ ያገኘው ገቢ በማነጻጸር እንደሆነ የተከራከሩ ሲሆን የሰነድ መስረጃ በሚል የቀረበውም ይህ ከሳሽ በራሱ በ2011ዓ/ም እና በ2012 ዓ/ም ያገኘው ገቢ መሰረት አድርጎ በ2011ዓ/ም ማለትም የከሳሽ ደንበኛ የነበሩ ሳሊም ዋዝራ ያህያ ወደ 1ኛ ተከሳሽ ከመኮብለላቸው በፊት ያገኘው የነበረው ገቢ እና ከኮበለለ በኋላ ያገኛው ገቢ በማነጻጸር እንደሆነ የተከራከረ ሲሆን የተከሳሾች ጠበቃ በበኩላቸው ከሳሽ ለማነጻጸሪያነት ያቀረበው የሂሳብ መግለጫ በሚል የተገለፀ ሲሆን ለክርክሩ ምክንያት የሆነው ቪድዮ ጀት ሽያጭ እና ትርፍ በግልጽ የሚያሳይ አይደለም፤ከ በኢንዱስትሪያል እና ኢንጅነሪን ማማከር፣ በዲዛይን እና ቁጥጥር ፕሮጀክት አመራር እና ከሽያጭ በኋላ አገልግሎት መስጠት በሚሉ የስራ መስኮች ላይ የተሰማራ ድርጅት ነው፤ አያይዞ ያቀረበው የሂሳብ ሰነድም አጠቃላይ የሚሰራውን ስራ እንጂ በክሱ ላይ የቀረበውን ቪድዮ ጀት ሽያጭ እና ትርፍ የሚያሳይ አይደለም ስለሆነም በከሳሽ ላይ የደረሰ ጉዳት ለም በማለት ተከራክረዋል ፡፡ ችሎቱም በግራ ቀኙ የቀረቡት መከራከሪያዎች እና ማስረጃዎችን ከተገቢው ህግ አንጻር እንደሚከተለው ምርምሯል፡፡

የንግድ ውድድርና ሸማቾች ጥበቃ ይግባኝ ሰሚ አስተዳደራዊ ፍርድ ቤት ተከሳሾች በከሳሽ ላይ ተገቢ ያልሆነ የንግድ ውድድር ተግባር ፈጽመዋል በሚል ውሳኔ እንደሰጠ እና ለዚህ ውሳኔም መሰረቱ እሱ እንደሆነ ከላይ ለመግለጽ ተመኩሯል፤ ተገቢ ያልሆነ የንግድ ውድድር ተግባር ተፈጽመዋል ከተባለ ደግሞ ብንግድ ውድድርና ሸማቾች ጥበቃ አዋጅ ቁጥር 813/2006 አንቀጽ 8/1/ መሰረት በከሳሽ ላይ ወይም በተወዳዳሪው ነጋዴ የንግድ ጥቅም ላይ የደረሰ ጉዳት ወይም ሊደረስ የሚችል ጉዳት አለ ማለት ነው ፡፡ ከዚህ አንጻር ተከሳሾች በከሳሽ ላይ የደረሰ ጉዳት የለም በሚል ያቀረቡት መከራከሪ ተቀባይነት ያለው አይደለም ፡፡ በሌላ በኩል ከሳሽ በቃል ክርክር ወቅት ተከሳሾች በጽሁፍ በሰጡት ምላሽ በክሳችን ላይ ያቀረብነው የጉዳት መጠን ስላልተቃወሙ እንዳመኑ ተቆጥሮ ውሳኔ ይሰጥልን በሚል ተከራክረዋል፡፡ ሆኖም ተከሳሾች በጽሁፍ በሰጡት ምላሽ አመልካች በማስረጃ ያልተረጋገጠና ባልተረጋገጠ ጉዳት ብር 2175694.78/ሁለት ሚሊዮን አንድ መቶ ሰባ አምስት ሺ ስድስት መቶ ዘጠና አራት ብር ከ ሰባ ስምንት ሳንቲም/ መጠየቃቸው የህግ አግባብነት የሌለው ነው በሚል ምላሽ የሰጡ

በመሆናቸው ከሳሽ እንደሚሉት አምነው የሰጡት ምላሽ የለም ፡፡ በከሳሽ የቀረበው የጉዳት መጠን በማስረጃ ያልተረጋገጠ እና ጉዳት መኖሩም ያልተረጋገጠ ነው በሚል ምላሽ ከተሰጠ መጠኑ ላይ አምኖዋል የሚል ድምዳሜ አያሰጥም ፡፡ ስለሆነም ከሳሽ በክሳቸው ላይ ያቀረቡት የጉዳት መጠን በተመለከተ የማስረዳት ሃላፊነት ያለባቸው መሆኑ እደተጠበቀ ሆኖ የሚጠይቁት የጉዳት ካሳም ከደረሰባቸው ጉዳት ጋር ተመጣጣኝ መሆን ይጠበቅበታል፡፡ ምክንያቱም በንግድ ውድድርና ሸማቾቸ ጥበቃ አዋጅ ቁጥር 813/2006 አንቀጽ 32/ለ/ ላይ በግልጽ እንደተደነገገው ተገቢ ባልሆነ የንግድ ውድድር ተግባር ምክንያት ጉዳት ለደረሰባቸው ነጋዴዎች አግባብ ባለው ህግ መሰረት ካሳ እንዲያገኙ ማድርግ ለዚህ ችሎት ከተሰጠው ስልጣን አንዱ ነው ፡፡ ይህ አዋጅ ተገቢ ያልሆነ ንግድ ውድድር ተግባራት ምን እንደሆኑ የሚደነግግ እንጂ በነዚህ ተግባራት አመካኝነት ለደረሰ ጉዳት ካሳ የሚከፈልበት አግባብ ያልደነገገ በመሆኑ የጉዳት ካሳ ምንነት እና መጠን በሚመከከት ተደንግጎ የምናገኘው በፍትሃብሄር ህጉ ላይ ነው ፡፡ ስለሆነም ከሳሽ ተገቢ ባልሆነ የንግድ ውድድር ተግባር አመካኝነት ጉዳት ደርሶበኛል ብሎ በክሱ ላይ የገለጸው ገንዘብ መጠን በተመለከተ ስለ ጉዳት ካሳ የተደነገጉ የፍትሃብር ህግ ድንጋጌዎች መሰረት አድርጎ ለጉዳዩ ዕልባት መስጠት ተገቢ ነው ፡፡ ከዚህ አንጻር የፍትሃብሄር ህግ አንቀጽ 2091 ስር ለደረሰው ጉዳት አላፊ የሆነ ሰው የሚከፍለው የጉዳት መጠን ተበዳዩ ላይ ከደረሰው ጉዳት ጋራ እኩል ሆኖ መመዘን እንዳለበት ይደነግጋል ፡፡ ስለሆነም በተከሳሾችም በመከራከሪያነት እንደቀረበው ከሳሽ ደረሰብኝ ብሎ ያቀረበው የጉዳት መጠን የከሳሽ ደንበኛ ወደ 1ኛ ተከሳሽ በመኮብለሉ ምክንያት ብቻ የመጣ ስለመሆኑ የሚያመላክት አይደለም ፡፡ ከሳሽ የተሰማራበት የንግድ ዘርፍ ለክስ ምክንያት በሆነው የቪድዮጆት ሽያጭ ብቻ እንዳልሆነ እና ሌሎች ስራዎችም እንዳሉት በተከሳሾች በኩል በመከራከሪያነት የቀረበ ሲሆን ከሳሽም ይህንን ካለማስተባበሉም በላይ ራሱ የሰነድ ማስረጃ ብሎ ባቀረበው እና የሂሳብ መግለጫ በሚለው ስር ከሳሽ ዋና ትኩረት አድርጎ የሚሰራው በኢንዱስትሪያል እና ኢንጅነሪንግ ማማከር ፣ በዲዛይንና በቁጥጥር ፕሮጀክት አመራር እና ከሽያጭ በኂላ አገልግሎት መስጠት እንደሆነ ገልጾ አቅርቧል፤ በሌሎች የስራ ዘርፎችም የተሰማራ ከሆነ ደግሞ የከሳሽ ገቢ የቀነሰው በተከሳሾች ድርጊት ምክንያት ብቻ ነው ሊባል አይችልም ምክንያቱም የሂሳብ መግለጫ በሚል ያቀረበው ማስረጃ በተከሳሾች ድርጊት ምክንያት ምን ያህል ጉዳት እንደደረሰበት ፣ በሌሎች የስራ ዘርፎች ምክንያት ምን ያህል ጉዳት ደረሰ የሚለው የሚያሳይ አይደለም ፡፡ ስለሆነም ከሳሽ በተከሳሽ ድርጊት አመካኝነት የደረሰበት ጉዳት ምን ያህል እንደሆነ ካቀረበው ማስረጃ በግልጽ ለመረዳት ወይም ለመገመት አዳጋች ነው

ስለዚህ የፍትሃብሄር ህግ ቁጥር 2091 ለደረሰ ጉዳት ሃላፊ የሚኮነው ተመጣጣኝ በሆነ አግባብ እንደሆነ የሚደነግግ ቢሆንም ይህንን ላመረጋገጥ አዳጋች በሚሆንበት ጊዜ በፍትሃብሄር ህግ ቁጥር 2102 መሰረት በርትዕ ሊወሰን እንደሚገባው ይደነግጋል፡፡

ከዚህ አንጻር በተከሳሾች ተገቢ ያልሆነ የንግድ ውድድር ተግባር አመካኝነት በከሳሽ ላይ የደረሰ ጉዳት እንዳለ ወይም ሊኖር እንደሚችል የሚገመት ቢሆንም በከሳሽ ላይ የደረሰው ጉዳት መጠን ምን ያህል እንደሆነ ግን በማስረጃ ለማረጋገጥ ችሎቱ ስላልቻለ ተከሳሾች እንዲከበልል ያደረጉት የከሳሽ ደንበኛ አንድ ድርጅት መሆኑን እንዲሁም 1ኛ ተከሳሽ የከሳሽ ደንበኛ ከነበረው ሳሊም ዋዝራ ያህያ ሽያጭ እና አገልግሎት የሰጠው ሁለት ጊዜ በሁለት ደረሰኝ ብቻ እንደሆነ ከሳሽ በዳኝነት ችሎቱ ትዕዛዝ ከገቢዎች እንዲቀርብልኝ ብሎ ባመለከተው መሰረት ችሎቱም በትዕዛዝ እንዲቀርብ ካደረገው የሽያጭ ደረሰኝ መረዳት የሚቻል ነው ፡፡ ስለሆነም ተከሳሾች ተገቢ ካልሆነው የንግድ ውድድር ተግባር ያገኙት የጥቅም መጠን ፣ የከሳሽ ደንበኛ ከነበረው ሳሊም ዋዝራ ያህያ ጋር ያደረጉት የግብይት ድግግሞሽ አነስተኛ መሆኑን እና ይህ ደግሞ በከሳሽ ላይ ሊደርስ የሚችለው የጉዳት መጠን ብዙ እንደይሆን የሚያደርገው መሆኑን በመገመት ተከሳሾች በጋራ እና በተናጠል በርትዕ ለከሳሽ የጉዳት ካሳ እንዲከፍሉ ችሎቱ ከድምዳሜ ላይ ደርሷል፡፡ በመሆኑም የሚከተለው ተወስኗል፡፡

<u>ውሳኔ</u>

1ኛ/ ተከሳሾች በጋራ እና በተናጠል 200 000 / ሁለት መቶ ሺ / ብር ለከሳሽ እንዲከፍሉ ተወስኗል ፡፡

2ኛ/ወጪ እና ኪሳራ በተመለከተ ከሳሽ ዝርዝር አቅርቦ የመጠየቅ መብቱ ተጠብቋል፡፡

3ኛ/ በውሳኔው ቅሬታ ያለው አካል ለኢፌዴሪ የንግድ ውድድርና ሸማቾች ጥበቃ ይግባኝ ሰሚ አስተዳደራዊ ፍርድ ቤት በ30 ቀናት ውስጥ ይግባኝ ማቅረብ ይችላል፡፡

4ኛ / መዝገቡ ተዘግቷል ወደ መዝገብ ቤት ይመለስ፤

የማይነበብ የሶስት ዳኞች ፊርማ አለበት