

Can't Anyone Keep a Secret?

Gone with a Puff of Air

Boxes of bagels were stacked in the break room, so it must be Thursday morning — but nobody seems to be touching the bagels. There were always fresh bagels on Thursday mornings, because that's when Bill stopped in from the process gas supply house to check inventory and meet with the production engineers.

This Thursday was particularly busy; the engineers were conferencing with the shop foreman to discuss a Q.A. problem that had been discovered in a recent production run. Failure reports were coming in from one of the company's largest manufacturing customers. The problem had to do with some cold solder joints that were causing product failures at low temperatures. It looked like the suspect was the wave solder station that had recently been installed on one of the production lines. A couple of the small geometry components were not soldering reliably, and unless the problem got solved in the next few hours, the line would be closed until a work-around could be engineered.

Bill overheard talk of the problem and joined a group discussion, which included the foreman. The problem definitely had been isolated to the solder station, but calls to the vendor had yielded no help. Bill mentioned that another one of his customers, a competing contract manufacturing company down the street, had dealt with a similar problem a few months earlier. Bill said the company stopped production on their line for five weeks and replaced the solder machine twice before fixing the problem — it had cost them some \$6 million in product replacement, overtime and lost production.

The other customer had figured out that a micro-vapor cloud of indeterminate composition was being generated over the fastforming solder joints and causing some of the joints to later fail. They had solved the problem, he said, by purging the solder



Courtesy Photo

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vapor using low-grade nitrogen gas — mostly air. Bill's company could provide the gas. Bill, of course, was only trying to be helpful — just doing his job to help his customers solve their problems. If he could sell product in the process, all the better. It was never his intention to steal one customer's trade secret and deliver it to another in exchange for a commission on a few cylinders of air.

However, in addition to bagels that Thursday morning, Bill had effectively transferred a \$6 million gift from his first customer to his second. The cost of the first company's solder problem, which had initially been \$6

million to solve, had doubled to \$12 million since their competitor would now not have to spend the same amount of time and effort to solve their own problem. Bill, inadvertently, had robbed the first company of an opportunity to compete while the second company spent its own time and money solving the same problem.

Really good trade secrets are very hard to keep. Like trying to store Jello in a birdcage, there are a hundred ways that secrets can slip out, and without vigilance and education, the cage will be forever empty.

What is A Trade Secret?

A trade secret is nearly any form of information used in business that provides an advantage over a competitor who does not know or use it. To qualify for trade secret protection, the “secret” must be of commercial value, not be well known, and not be easily discernable using legal means. It is also a requirement in most states that reasonable steps be taken to protect the secret.

Managing Vendors

A key element in protecting trade secrets is vendor management. Effective vendor management requires three elements: documentation, education and protection. The documentation element requires having a written trade secret policy, as well as a specific person in the company assigned to be the curator and protector of trade secrets. The policy should be clear and easily understood. It should apply to all employees and vendors.

The education aspect of vendor management should allow for all employees and vendors to be regularly briefed and reminded of the policy. The employees interacting with the vendors must ultimately be charged with the responsibility of training vendors on trade

secret management. When new products are being developed, it is important to emphasize to all vendors, preferably in writing, which of the elements of the development are confidential. The vendors should also be frequently reminded of the importance of protecting the company’s confidences.

Ongoing protection is the most important part of the trade secret preservation mechanism. There are a number of activities that can help with the protection process. For instance, avoid keeping visitor logs at the reception desk — use sign-in cards instead. It’s often too simple of a matter to deduce the activities of a company by viewing their visitor log, especially by identifying who has visited whom and the purposes of the visits. Next, restrict the dissemination of important trade secrets to only small groups of need-to-know people. Also, limit the transmission of trade secrets using e-mail. It will help to reduce the risk of accidental broadcasting. Use nondisclosure agreements with all outside parties when sharing trade secrets. Although NDAs will not ultimately prevent intentional theft, the ceremony of signing such an agreement acts as a cautionary reminder to those well-intentioned business partners. Finally, seek alternative legal tools to protect trade secrets, such as patents and copyrights.

Vendors are the worker bees of industry. They facilitate productivity and growth and enable businesses to bloom and prosper. But like the bees that move from plant to plant, vendors can also inadvertently move important trade secrets among the companies they service. Documentation, education and protection are all essential elements to trade secret preservation.

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