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Business under threat: The criminal liability of trade secret theft in malaysia? (Article)

Jalil, J.A. ✉, Hassan, H., Rahman, N.A., Ali, R.B.R.M., Mohamed, D., Najib, A. 👤

International Islamic University Malaysia, Malaysia

Abstract

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Maintaining and ensuring secrecy of valuable trade secret offers competitive advantage to its owner over the competing rival. Because of this, the trade secret is often subject to various threats ranging from misappropriation, theft and corporate espionage launched by rivals and also the employee. Such threats can impede growth of the victimized firms and discourage further innovative and inventive endeavor. One of the ways to deter such offence is by providing specific criminal sanction for the theft of trade secret as practiced in the US and Japan. The US regards theft of trade secrets as a federal crime under the Economic Espionage Act 1996 and in Japan, theft of trade secret is a crime under the Unfair Competition Law. In comparison, Malaysian law does not provide any specific legislation criminalizing theft of trade. But being a member of the TPPA, Malaysia is required to criminalize such theft. This article analyzes the competency of the existing criminal, cyber and national security laws in Malaysia to address the issue. In doing so, the practice of the US and Japan is taken as example to shed light as to the proper implementation of criminal prosecution against the theft of trade secret. © 2020, Universiti Malaysia Sarawak. All rights reserved.

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In Malaysia the cyber laws namely the Communication and Multimedia Act 1998 (CMA) and the Computer Crimes Act 1997 (CCA) were enacted to govern the cyber environment in Malaysia. The authorities entrusted to monitor this development are the Communication and Multimedia Commission under the Ministry of Information and the Cybersecurity within the Ministry of Science and Technology with the support from the Royal Malaysian Police. The CMA 1998 establishes a regulatory framework in support of national policy objectives for the communications industry. Services regulated under the Act include traditional broadcasting and telecommunications, as well as computer networks, and content carried over those systems. The CMA seeks to provide a common set of regulatory

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provisions based on generic definitions of communications services. It is therefore suited to a converged environment where the same digital information can be transported over any electronic network. The Act contains a penal provisi...

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