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COCA-COLA'S BILLION-DOLLAR SECRET: HOW TRADE SECRETS OUTPERFORM PATENTS

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1. Coca-Cola: More than Just Soda

The Coca-Cola Co. is a non-alcoholic beverage company that manufactures, markets, and sells the said products. The company has a wide category of products, including sparkling soft drinks, water, enhanced water and sports drinks, juice, dairy, and plant-based beverages. Moreover, the company owns several brands under which these beverages are marketed globally, including Diet Coke, Fanta, Sprite, Minute Maid, De Valle, Aquarius, Dasani, etc. The company started in 1886 with Dr. John Pemberton in Atlanta, Georgia, where he experimented by mixing a syrup with carbonated water. The drink was then sold as a soda fountain drink for five (05) cents a glass. However, in 2024, the company had a revenue of \$46.1 billion⁸⁵⁸. The best product of the company is still Dr. John's experiment of syrup mixed with carbonated water, which is considered traditional 'Coca-Cola.' This recipe/formula or the experiment by Dr. John is well well-guarded secret kept private for over 130 years now. The entire business of the company revolves around its secret recipe. Reports suggest that the recipe is kept in a secret vault in Coca-Cola's headquarters. Dr. John shared this secret to a small group in the early 1900s, but never wrote it down on any paper. Since then, the core principle of Coca-Cola Co. is the keep their formula a secret and prevent the materials from being leaked. The individuals who get to know the formula must sign a strict Non-Disclosure Agreement (**NDA**). It is also believed that at once only two (02) individuals are allowed to know the actual formula of the recipe, who are never allowed to meet each other or even travel through any means at the same time.



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⁸⁵⁸ *Coca Cola, Forbes*, <https://www.forbes.com/companies/coca-cola/> (16 April 2025)

2. Patents vs. Trade Secrets: What is the real edge?

The Company follows strict measures to prevent leaks of its formula; the security is so tight, which is even more than compared of many developing countries security measures. This also states that the company believes that its success is due to the value of the formulas and their exclusivity. To safeguard themselves, companies often patent their work.

A patent is considered an official right to be the only person to make, use, or sell products or an invention. It is a type of intellectual property that gives its owner the legal right to exclude others from making, using, or selling that particular property without permission from the patent holder. A company opting for a patent seems a reasonable decision in the present case; however, Coca-Cola Co., having one of the largest patent portfolios globally, comprising over 9,246 patents across 2,448 unique patent families, has not patented its traditional formula of the product sold under the name 'Coca-Cola' to date.

3. Why Coca-Cola chose Secrecy over Protection

The Coca-Cola company opted for trade secrets to safeguard its recipe instead of patent legislation to protect its business. A trade secret is a form of intellectual property comprising confidential information that is not generally known or readily ascertainable, derives economic value from its secrecy, and is protected by reasonable efforts to maintain its confidentiality. The company decided on this method to have an advantage over its competitors. The logic behind ignoring patent protection was that patents provide limited term protections, which also require public disclosure, while trade secrets offer potentially indefinite protection for confidential information, without the need for public disclosure. The term, as per the Patent Act 1836 (**Patent Act**), was for 17 years, which was only extended to the next 20 years, for which they must provide full disclosure and a written

formula to attain a patent, in which the access for the formula would be easy for anyone post the expiry of the patent. However, a trade secret can be held for generations after generations, without even disclosing it to any authority to get the tag of 'Trade Secret.'

Coca-Cola realised that a 20-year extension of the patent, other companies could use the same formula and recreate the same drink and sell it at their price. Moreover, the patent would give the company a monopoly only for those 20 years. Therefore, the company decided to keep its recipe and formula a trade secret. As the company decided to keep their recipe and formula a trade secret, they know the potential growth the company can achieve over the years. But, in general, a trade secret is only considered to be protected if the owner of the trade secret takes reasonable efforts to keep the knowledge private. The court would rule in favour only after reasonable care is proved; due to this, Coca-Cola's measures to keep their formula in the vault, sign an NDA, etc., become essential.

4. Legal Landscape: Trade Secrets in the eyes of the law

People easily misappropriate the significance of trade secrets. Often, they consist of information that can be memorized by noted down by any employee, customers, developers, suppliers, or anyone interested in that information. The more people who know a trade secret in a company with having high turnover ratio, the harder it is for the company to keep the information a secret. In an economy, competitors, journalists, or bloggers get hold of these trade secrets, and the information may be used immediately, especially when anyone can get access to any information on the internet. Furthermore, once a trade secret becomes public, its status as a trade secret may be lost at that very moment.

The court emphasizes that '*reasonable efforts*' to keep the information a trade secret, as mentioned in Article 39 of The Agreement on Trade-Related Aspects of Intellectual Property Rights (**TRIPS Agreement**), which is a legally

binding agreement within the World Trade Organisation (**WTO**). India is also a signatory to the TRIPS Agreement. The interpretation of what may and may not be considered reasonable efforts is always present when companies choose this type of right for their information to be safeguarded.

Anyone to whom the trade secret must be disclosed should have to sign an NDA, and when possible, even a non-compete agreement. These agreements can include clauses that restrain employees from working on confidential information from their home computers as well. It must be noted that any documents or items that contain trade secrets should be conspicuously marked 'Confidential.' The policy regarding trade secrets should be clearly articulated in the company handbook to all stakeholders. However, measures should be taken by the company to restrict access to the trade secrets, such as by issuing employee badges or installing locks and passwords, and in the case of Coca-Cola, have the formula in a vault.

No government entity overlooks the issues of trade secrets; enforcement of trade secrets is largely a matter of policing by private companies that can afford to do so. However, in the case of intentional theft of trade secrets, the Federal Economic Espionage Act 1996 (**EEA**) was established with some state laws in the United States of America that provide criminal penalties. Even misappropriation of trade secrets is considered a form of unfair competition.

5. Conclusion

Artificial intelligence has now emerged as a crucial tool for any activity in every field. The reliance on AI has acted as a double-edged sword in the present situation. Whereas, with this digital advancement also comes new legal frameworks to protect information, and in the present case, these advancements are necessary for Coca-Cola to protect their 'magical formula.' Laws such as the U.S. Defend Trade Secrets Act 2016 (**DTSA**), which allows an

owner of a trade secret to sue in federal court when its trade secrets have been misappropriated, also the EU Trade Secrets Directive passed on 08 June 2016, play a crucial role in protecting trade secrets.

These laws are adapting to reflect new realities and passing necessary amendments to protect this data in today's digital world. Currently, in India, there are no separate laws relating to trade secrets. But rights in such aspects were invoked through the Indian Contract Act 1872⁸⁵⁹, in which principles of equity or by way of common law action for breach of confidence. The landmark case of *John Richard Brady & Ors v. Chemical Process Equipment P Ltd & Anr (Brady Case)*⁸⁶⁰ where the Delhi High Court held that "These rules may, according to the circumstances in any given case, either rest on the principles of equity, that is to say the application by the Court of the need for conscientiousness in the course of conduct, or by the common law action for breach of confidence, which is in effect a breach of contract.." However, the 22nd Commission of India has also proposed the Trade Secret Bill 2024 after realising the importance of trade secrets; however, laws related to patents, trademarks, copyrights, etc., have already existed for years.

These laws are beginning to recognize the role of technological safeguards in determining whether reasonable steps were taken to protect trade secrets, which is an essential component of their legal protection. Despite the technological leaps, the human factor remains crucial. Insider threats, unintentional data leaks, and social engineering continue to pose significant risks. Thus, employee education, non-disclosure agreements, and internal access policies must go together with digital safeguards.

Coca-Cola's secret formula has existed even before there was technology to keep these things safe, which has helped the company not

⁸⁵⁹ <https://www.azbpartners.com/bank/trade-secrets-india/> (20 May 2025)
⁸⁶⁰ AIR 1987 Delhi 372.

to rely on these sources to maintain its secrets. Although the human factor attached remains crucial. Insider threats, unintentional data leaks, etc, continue to pose significant risks. Thus, methods such as NDA, reduced internal access policies must go hand in hand with digital safeguards to protect such a big company from losing control.

In this digital age, one expects to shift to better modern technology, but Coca-Cola, on the other hand, still believes in protecting their formula themselves without using any modern laws or other methods, which means they tell their formula to someone else. Moreover, it is the belief and fundamentals upon which a company wishes to run, and no one must operate in a certain way. The reason behind choosing this approach by Coca-Cola is strategy-based, and to always keep their customers engaged with the curiosity of their formula.

