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**THE PERCEPTION AND RELEVANCE OF  
TRADE SECRETS POLICY  
IN THE NIGERIAN FOOD BUSINESS SECTOR:  
CASE STUDY OF  
THE FEDERAL CAPITAL TERRITORY, ABUJA**

Adetutu Deborah Aina-Pelemo, PhD,\* Adetutu A. Adewole\*\*  
& Folake Joy Ayodele-Davis\*\*\*

**Abstract**

*Trade-related aspect of Intellectual Property Rights (TRIPS) Agreement requires its signatories to ensure the protection of undisclosed information of independent value, trade secrets. Trade secrets are acknowledged as one of the most important methods of protecting all kinds of Intellectual Property. However, in Nigeria, domestic legislation for the protection of trade secrets is sparsely recognised and case laws or judicial precedents rarely reported. Nigeria is a signatory to TRIPS, so the absence of a domestic legislation protecting trade secrets becomes an issue worthy of discussing, as this article intends to address. This study examines whether trade secrets exist in Nigeria or not. Specifically, it investigates the methods food businesses with trade secrets use in protecting their intellectual property right regardless of the unavailability of a standard or comprehensive legal framework in Nigeria. This study analyses the legal framework for trade secrets in other jurisdictions. Furthermore, scientific methods were used to gain empirical evidence on the research questions raised. The study found that trade secrets exist in Nigeria, notwithstanding the absence of trade secrets law. However, the commercial value attached to such information is not widely acknowledged as most of the participants surveyed operate a pre-literate level by attributing their business success and trade secrets protection to supernatural beings. The*

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*results also reveal how trade secrets are perceived and show the extent of their relevance to Nigerian businesses: among other findings, it is perceived that trade secrets do not only belong to the employers but often belong to the employees, and the employee could leave with the secret when exiting the organisation. It is recommended that the Nigerian government fashion a uniform law that will create clear and precise provisions for the protection of trade secrets, as well as educate stakeholders on the commercial value of trade secrets.*

## Introduction

Trade secrets are among the most valuable information a company owns, especially in this modern world, characterised by globalised trade and interconnected chains of supply.<sup>1</sup> A trade secret can be the sole reason a company still operates or why one company would be miles ahead of competitors and others within the same market. In recognising this fact, the law protects these secrets by giving legal protection to innovative and technical knowledge.<sup>2</sup> Erkal believes that trade secrets only supplement patents in the early stage of innovation which protects work until the owners can patent them.<sup>3</sup> Several survey results agree that trade secrets are seen as more beneficial than patents in both large and small firms.<sup>4</sup> Various scholars defined trade secrets according to their views. Yeh acknowledges that there is no exact and generally acceptable definition of trade secrets; however, characterizes a trade secret to be made up of information that is confidential and commercially valuable.<sup>5</sup> This definition by Yeh shows that although trade secrets have no all-encompassing definition, where information is of confidential nature and is commercially valuable to a business, it can be generically termed as a trade secret.

Risch describes trade secrets as some sort of information that has value because it is not generally known.<sup>6</sup> The definition by Risch is

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<sup>1</sup> International Chamber of Commerce, 'Protecting trade secrets: Recent EU and US reforms' (2019) 5 <<https://www.iccmex.mx/uploads/final-icc-report-protecting-trade-secrets.pdf>> accessed 29 August 2022.

<sup>2</sup> Vincenzo Denicol`O and Luigi Alberto Franzoni, 'Patents, secrets and the first inventor defence', *Journal of Economics & Management Strategy* (2004) 13(3): 517-538 <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1430-9134.2004.00021.x> accessed 29 August 2022.

<sup>3</sup> Nisvan, Erkal, 'On the interaction between patent and trade secret policy' (2004), 09-10 <<http://www.nisvanerkal.net/patent-trade-secrecy-final.pdf>> accessed 10 September 2022.

<sup>4</sup> Brouwer, Erik, and Alfred Kleinknecht, 'Innovative Output, and a Firm's Propensity to Patent: An Exploration of CIS Micro Data.' *Research Policy* (1999) 28 (6): 615–624.

<sup>5</sup> T. Yeh Brian, 'Protection of trade secrets: Overview of current law and legislation' Congressional Research Service, CRS Report (2016) R43714 <[www.crs.gov](http://www.crs.gov)> accessed 29 August 2022.

<sup>6</sup> Risch, Michael, 'Why do we have trade secrets?' *Marquette Intellectual Property Law Review* (2007) 1(1): 6-7.

like that of Yeh as he also sees it as information that is kept secret and one which has value. However, a clear difference shows in the fact that Risch attributes the value of this information to be because of the fact that the information is kept secret. Harshwardhan and Keshri opine that trade secrets are capsules of information, ideas and knowledge which provide a competitive edge to a business over others.<sup>7</sup> This author does not limit a trade secret to being only information but enlarges the concept to include an idea. Drzewiecki defines trade secret to be a term used to denote any information which is confidential to retain a competitive advantage in business.<sup>8</sup> The definition by these two authors is similar. This differs from that of Yeh and Risch as they described trade secret to be a sword wielded in the hands of a business to be ahead of other businesses in the same market. This author's opinion indicates trade secrets to be the secret ingredient that makes one business to be preferred by the consumers.<sup>9</sup>

Nair, on the other hand, defines trade secrets as internal instruments of a company whose primary protection remains the responsibility of the owner and is not disclosed to anyone, including the government, in the process of protection.<sup>10</sup> In defining trade secrets, this author takes the route of describing its method of protection as well as emphasising that the information remains a secret no matter what. It is not an intellectual property that is disclosed to the government for it to be protected like patents; rather, it is one that the owner already protects. The law then goes further to fortify the protection that the owner already gives. Going by this definition, where the owner of an instrument does not protect it as a trade secret, then neither can the

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<sup>7</sup> Harshwardhan and Saurav Keshri, 'Trade secrets: A secret still to unveil' *Journal of Intellectual Property Rights* (2008) 13: 208-217.

<sup>8</sup> A. Drzewiecki, 'Proposed EU trade secrets directive: Shaping the new EU legislation on the protection of trade secrets' (2014) <<http://yadda.icm.edu.pl/yadda/element/bwmeta1.element.ekon-element-000171323477>> accessed 5 September 2022.

<sup>9</sup> T. Yeh Brian, 'Protection of trade secrets: Overview of current law and legislation' (2016) Congressional Research Service, CRS Report R43714 <[www.crs.gov](http://www.crs.gov)> accessed 29 August 2022; Risch, Michael, 'Why do we have trade secrets?' (2007) *Marquette Intellectual Property Law Review* 1(1): 6-7.

<sup>10</sup> M. D, Nair 'Protection of trade secrets/undisclosed information' *Journal of Intellectual Property Rights*, (2002) 7: 530-535.

law. The authors' use of the phrase 'internal instruments' points to the fact that a trade secret may not only be an information, but idea, a process, designs, drawings, architectural plans, blueprints and maps, algorithms, instructional methods, manufacturing processes, repair processes, techniques and know-how, document tracking processes, formulas for producing products, business information such as sales and distribution methods, lists of suppliers and clients, etc.

### **Legal Framework for the Protection of Trade Secrets**

Trade secret protection is only accorded for instruments which have been duly recognised to be trade secrets. An action for trade secret can only arise where the secret is gained through improper means such as theft, bribery, misrepresentation, breach, or inducement of a breach of duty to maintain secrecy or espionage through electronic or other means.<sup>11</sup> Where a trade secret is infringed, it is referred to as misappropriation.<sup>12</sup> Different countries have various methods of protecting trade secrets against misappropriation or infringement. Mantu and Pam found that there is no comprehensive international standard for trade secret protection. Hence, a vast array of differences is found in relation to trade secrets.<sup>13</sup> While some countries have special statutes to protect trade secrets or unfair competition laws, other countries treat trade secrets as an aspect of tort or contract law. In some countries such as the United States of America, trade secret misappropriation leads to criminal liability, and in other countries like the United Kingdom, it remains a civil action.<sup>14</sup> The same researchers considered the legal framework for trade secret protection in Asia, Europe, Africa, and America extensively. However, the work does not consider West Africa or Nigeria, which is one of the focuses of the instant study. Other studies considered trade secret protection in

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<sup>11</sup> United States Trade Secrets Act, s 1.

<sup>12</sup> Satija, Neelam, 'Trade Secret: Protection & Remedies' (2009) <<https://ssrn.com/abstract=1614222>> or <<http://dx.doi.org/10.2139/ssrn.1614222>> accessed August 2022.

<sup>13</sup> Adam, A. Pam, and John I. Mantu, 'An appraisal of the legal framework on confidential information and trade secrets in Nigeria' (2019) SSRN Electronic Journal, <doi: 10.2139/ssrn3422302> accessed August 2022.

<sup>14</sup> Schultz and Lippoldt, 'Uncovering Trade Secrets - An Empirical Assessment of Economic Implications of Protection for Undisclosed Data' (2014) OECD Trade Policy Papers No. 167.

various regions, none of which included Nigeria,<sup>15</sup> and that is the gap this study seeks to fill.

### **Trade Secret Protection in China**

Schultz and Lippoldt observe that China's primary trade secret law is the Unfair Competition Law of 1993 which has been absorbed and localised in different localities of China, such as Beijing Municipality, Guangdong Province, Hainan Province, Sichuan Province, Henan Province, Shenzhen Municipality, and Shanghai Municipality.<sup>16</sup> Bai and Guoping further points out other laws in China for the protection of trade secrets, including the Trade Secrets Regulation of 1998, Unfair Competition Judicial Interpretation of 2007, Contract Law of the Peoples Republic of China 1999,<sup>17</sup> Company Law of the Peoples Republic of China 2005,<sup>18</sup> Labour Law of the Peoples Republic of China 1994<sup>19</sup> and the Labour Contract Law of the Peoples Republic of China 2007.<sup>20</sup> Article 10 of the Unfair Competition Law defines a trade secret as "Technical and business information that is unknown to the public, which has economic value and practical utility for which the trade secret owner has undertaken measures to maintain its confidentiality".<sup>21</sup>

Swaroop examines the remedies and methods of protection for the trade secret law in China; the enforcement of trade secret law in China includes criminal prosecution and administrative penalties under the Anti-Unfair Competition Law, while the remedies available to victims

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<sup>15</sup> Swaroop Niharika, 'Secrets of trade secrets' (2014) *Journal of Intellectual Property Rights*, 6(4): 341-350; Mahfooz Z. Nomani, and Faizanur Rahman, 'Intellection of trade secret and innovation laws in Nigeria', (2011) *Journal of Intellectual Property Rights*, 16: 341-350.

<sup>16</sup> Schultz and Lippoldt. 2014. 'Uncovering Trade Secrets - An Empirical Assessment of Economic Implications of Protection for Undisclosed Data' *OECD Trade Policy Papers*, No. 167.

<sup>17</sup> Contract Law of the Peoples Republic of China 1999, article 43.

<sup>18</sup> Company Law of the Peoples Republic of China 2005, article 149-150.

<sup>19</sup> Labour Law of the Peoples Republic of China 1994, article 22, 102.

<sup>20</sup> Labour Contract Law of the Peoples Republic of China 2007, article 23.

<sup>21</sup> Benjamin, J. Bai and Guoping Da, 'Strategies for Trade Secrets Protection in China' (2011) *North western Journal of Technology and intellectual property* 9(7): 351.

of misappropriation include compensatory damages.<sup>22</sup> Remedies under contract law and labour law also apply in some instances. In 2009, McAfee, a security firm, surveyed 1000 companies in the U.S., U.K., Japan, India, Brazil, and the Middle-East, and it revealed that 50 per cent of the participants rated the threat level of their sensitive data in China to be high. The report also revealed that 26 per cent of the participants avoided business in China due to China's poor reputation in security matters.<sup>23</sup> Similarly, the study further reported that primary IP-related concerns of U.S. firms based in China were stolen trade secrets compared to the loss of sales, damaged goods, and the cost of intellectual property protection. Out of the 5000 firms surveyed by the United States International Trade Commission, 56.5 per cent of the participants viewed theft of trade secrets as a major security concern.<sup>24</sup> Schultz and Lippoldt observe that although China has strong laws for the protection of trade secrets, in theory, research shows that the evidentiary burden severely undermines the efficiency of these laws, procedures, and practices required to gain access to remedies in the instance of trade secret misappropriation.<sup>25</sup> Therefore, its implementation and enforcement are complex, concluding that trade secrets and sensitive information are not safe in China.

### **Trade Secret Protection in South Africa**

In South Africa, there are no applicable statutes as far as trade secrets are concerned. Goitom observes that common law principles protect trade secrets from the unauthorised use or acquisition by two kinds of actors involved; competitors and employees.<sup>26</sup> Therefore, the remedies

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<sup>22</sup> Swaroop Niharika, 'Secrets of trade secrets' (2014) *Journal of Intellectual Property Rights* 6(4): 341-350

<sup>23</sup> McAfee Inc., 'Unsecured Economies: Protecting Vital Information' (2009) <[https://www.cerias.purdue.edu/assets/pdf/mfe\\_unsec\\_econ\\_pr\\_rpt\\_fnl\\_online\\_012109.pdf](https://www.cerias.purdue.edu/assets/pdf/mfe_unsec_econ_pr_rpt_fnl_online_012109.pdf)> assessed 29 August 2022.

<sup>24</sup> McAfee Inc., 'Unsecured Economies: Protecting Vital Information' (2009) <[https://www.cerias.purdue.edu/assets/pdf/mfe\\_unsec\\_econ\\_pr\\_rpt\\_fnl\\_online\\_012109.pdf](https://www.cerias.purdue.edu/assets/pdf/mfe_unsec_econ_pr_rpt_fnl_online_012109.pdf)> assessed 29 August 2022.

<sup>25</sup> Schultz and Lippoldt, 'Uncovering Trade Secrets - An Empirical Assessment of Economic Implications of Protection for Undisclosed Data' (2014) *OECD Trade Policy Papers* No. 167.

<sup>26</sup> Hanibal, Goitom, 'Protection of trade secrets' (2013) *The Library of Congress*, <<https://sgp.fas.org/eprint/lloc-trade.pdf>> accessed 10 September 2022.



available to the employer are in variants depending on the actor involved. Where the case is between an employer and employee, the matters to be considered will be whether the violation took place during or after the termination of an employment contract.<sup>27</sup> However, where the violation involves a competitor, the courts will consider it a form of unlawful competition. Goitom explains that trade secret protection between employees and employers is done on a contractual basis. Contracts such as Non-disclosure Agreements, restraint to trade agreements, etc. are recognised by South African courts to be in the interest of public policies to protect confidential information and trade secrets.<sup>28</sup>

Goitom further recognises the unfair competition action based on *Lex Aquila*, a Roman Tort law founded upon the country's colonialist heritage to be the closest thing to trade secret protection, which can be found in South Africa.<sup>29</sup> Where a competitor wrongfully interferes with the rights of a trade secret owner, which leads to an injury, may lead to an *Aquilian* action. According to Schultz and Lippoldt, *Lex Aquila* provided aggrieved parties with damages for wrongfully inflicted damages. As a result of South Africa's trade secrets being rooted in *Lex Aquila*, trade secret protection contemplates breach of contractual duty and misappropriation.<sup>30</sup> In *Dun and Bradstreet (Pty) Ltd v. S.A. Merchants Combined Credit Bureau (Cape) (Pty) Ltd*,<sup>31</sup> the plaintiff and defendants were rivals, and the defendant improperly obtained the plaintiff's data and sold it. The defendant was not in breach of a contractual relationship but was held guilty on the wrongfulness of his act according to the standard of fairness and honesty in competition.

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<sup>27</sup> *Ibid.*

<sup>28</sup> Hanibal, Goitom, 'Protection of trade secrets' (2013) The Library of Congress, <<https://sgp.fas.org/eprint/lloc-trade.pdf>> accessed 10 September 2022.

<sup>29</sup> *Ibid.*

<sup>30</sup> Schultz and Lippoldt, 'Uncovering Trade Secrets - An Empirical Assessment of Economic Implications of Protection for Undisclosed Data' (2014) OECD Trade Policy Papers, No. 167.

<sup>31</sup> 1968(1) SA. 209(C) at 216 E -217.

## Trade Secret Protection in the United Kingdom

For a while, the protection of trade secrets in the United Kingdom was pursuant to common law doctrines. There were no statutes that conferred criminal liability for trade secret misappropriation in England, and this fact led Sutherland to describe the legal framework for trade secrets protection in the United Kingdom (UK) as weak.<sup>32</sup> However, in a report by Arundel, a higher percentage of the 2849 and 49 European Research and development firms surveyed ranked trade secret protection to be more important than patents.<sup>33</sup> The Intellectual Property Office, UK report<sup>34</sup> and Schultz and Lippoldt<sup>35</sup> state that trade secrets in the United Kingdom were largely governed by case law which developed greatly to the extent that it became the major source of trade secrets protection.<sup>36</sup> The report further recognised trade secret as a subset of confidential information, but limited it to the context of employment law. This was sufficient to meet up with Section 39 of the TRIPS agreement, to which they are signatory.

The first statute to make provisions for the protection of confidential information and trade secrets in the U.K. is the Trade Secrets Directive of 2018, which was implemented at the European Union to ensure uniform protection of trade secrets in the European Union. The Directive did not materially change the trade secret protection in the

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<sup>32</sup> Eversheds, Sutherland, 'Trade secrets move (slowly) up the agenda' 2022. <[https://www.evershedssutherland.com/global/en/what/articles/index.page?ArticleID=en/Industrial\\_engineering/Trade\\_secrets\\_move-slowly-up\\_the\\_agenda](https://www.evershedssutherland.com/global/en/what/articles/index.page?ArticleID=en/Industrial_engineering/Trade_secrets_move-slowly-up_the_agenda)> accessed 5 May 2022.

<sup>33</sup> Arundel, Anthony, 'The relative effectiveness of patents and secrecy for appropriation' (2001) *Research Policy*, 30 (4): 611–624 <<https://www.sciencedirect.com/science/article/abs/pii/S0048733300001001>> accessed 29 August 2022.

<sup>34</sup> Intellectual Property Office, 'Consultation on draft regulations concerning trade secrets' (2018) DPS006807 <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/682184/Consultation\\_Trade\\_Secrets\\_Directive.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/682184/Consultation_Trade_Secrets_Directive.pdf)> accessed 29 August 2022.

<sup>35</sup> Schultz and Lippoldt, 'Uncovering Trade Secrets - An Empirical Assessment of Economic Implications of Protection for Undisclosed Data' (2014) OECD Trade Policy Papers, No. 167.

<sup>36</sup> *Ibid.*

U.K. in relation to the available remedies and proceedings as its provisions are like the common law rules. But it is important to note that the Directive emphasised the trade secret owner taking steps to ensure their secret is not revealed to the public. The Directive also makes provisions for a clear definition of trade secrets and a mechanism that ensures trade secrets' protection outside of Non-Disclosure Agreements.<sup>37</sup> However, in 2020, the United Kingdom exited the European Union, but this did not affect the protection of trade secrets due to the national nature of legal protection, that had long been established.<sup>38</sup>

### **Trade Secret Protection in the United States**

The law of trade secrets in the United States are highly developed. Schultz and Lippoldt explain that the states are governed by civil law while the national law takes criminal trade secrets with the Economic Espionage Act.<sup>39</sup> Assessing the trade secret law of the entire United States will be difficult because of its federalist nature, which leaves the jurisdiction of several matters inclusive of trade secrets, to the state. However, each state has a domesticated law of the Uniform Trade Secrets Act (UTSA), with a few variations. At the time of conducting the instant, 48 of 50 American states have adopted the UTSA except for New York and North Carolina. These exceptional states are important because of their size, commercial importance, and concentration of technology industries. Although, they do not adopt the UTSA, they still protect trade secrets extensively. North Carolina has its own Act, which is majorly similar to the UTSA, while New York follows common law and equity principles.<sup>40</sup>

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<sup>37</sup>Samantha, Kaye, 'The purposes of the trade secrets directive' (2018) <<https://www.taylorvinters.com/article/the-new-trade-secrets-directive-its-meaning-and-impact>> accessed 5 May 2022.

<sup>38</sup>Jonathan, Ball. (2020). 'Brexit and Trade Secrets: 6 key things to know' <https://www.lexology.com/library/detail.aspx?g=cd9a43d3-a3ee-4cfb-b9eb-a52ecf523f91> Accessed 6 May 2022.

<sup>39</sup>Schultz and Lippoldt. 2014. 'Uncovering Trade Secrets - An Empirical Assessment of Economic Implications of Protection for Undisclosed Data' *OECD Trade Policy Papers*, No. 167.

<sup>40</sup>*Ibid.*

The United States has one of the strongest and most advanced trade secret protection systems in the world.<sup>41</sup> The system in place is effective and reliable but also expensive. In the 2014 study conducted by the United State International Trade Commission among 7000 US firms, 56 per cent of internationally engaged firms recognised trade secrets as very important, while 48 per cent recognised trademarks, 37 per cent recognised patents, and 31 per cent recognised copyrights.<sup>42</sup> The survey further disclosed that in firms that would averagely be considered to be heavily protected by patents, trade secrets were still considered to be a more important type of intellectual property protection.<sup>43</sup>

Analogous results of several research works, such as the National Science Foundation (NSF) survey and the Business Research and Development and Innovation Survey (BRDIS) found that 58.3 per cent of U.S. firms considered trade secrets to be critical as compared to 48.3 per cents for patents, 43.5 per cent for trademarks, and 27.4 per cent for copyrights.<sup>44</sup> The industries considered by this survey were manufacturing, chemicals, machinery, transportation equipment, non-manufacturing, information, computer and electronic products, and professional, scientific, and technical services.

Crass, Valero, Pitton and Rammer discovered that 74.1 per cent of innovative firms made use of trade secrets due to the fact that secrecy can be applied to any innovation.<sup>45</sup> The empirical studies of Levin and

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<sup>41</sup> *Ibid.*

<sup>42</sup> United State International Trade Commission, 2014. Trade, Investment, and Industrial Policies in India, Publication Number: 4501, Investigation Number: 332-543; 140, 145. Available at <https://www.usitc.gov/publications/332/pub4501.pdf> Assessed 29 August 2022 accessed 5 May 2022.

<sup>43</sup> *Ibid.*

<sup>44</sup> Raymond M. Wolfe, 'Business Enterprise Research and Development Survey (BERD)' (2012) National Center for Science and Engineering Statistics' (NCSES), BRDIS, <<https://www.nsf.gov/statistics/srvyberd/>> accessed 10 September 2022.

<sup>45</sup> Crass Dirk, Valero Francisco Garcia, Pitton Francesco, Rammer, Christian, 'Protecting Innovation through Patents and Trade Secrets: Evidence for Firms with a Single Innovation' (2019) International Journal of the Economics of Business, ISSN 1466-1829 (Routledge, London) 26(1): 117-156, <<https://doi.org/10.1080/13571516.2019.1553291>> accessed 10 September 2022.

others showed an increase in secrecy protection and a decline in patent registration.<sup>46</sup> In consonance with this, the subsequent empirical study of Dass, Nanda and Steven revealed that the strengthening of trade secrets law is responsible for the decline in patent registrations.<sup>47</sup> Cohen and others carried out a study with 1478 Research and Development labs in the U.S. and found that these firms protected 50 per cent of their innovations with secrecy as opposed to patents.<sup>48</sup> In analysing 533 manufacturing firms in Massachusetts, US, Lerner observed that 43 per cent of all intellectual property lawsuits involved trade secrets.<sup>49</sup> The survey further reports that trade secrets protection is vital for small firms and confirms the assertion that trade secrets are a preferred protection method compared to patents due to the cost of patent registration.

The above empirical studies have shown that in the United States, trade secret protection is ranked as more important than other forms of intellectual property protection by the owners of intellectual property. This is also reflected in the laws of the country, as there are strong laws in place ensuring that trade secrets are not misappropriated. Also, in the instance of misappropriation, there is sufficient recourse for victims in the law.

### **Trade Secret Protection in Nigeria**

The quantum of piracy and counterfeiting in Nigeria's pharmaceutical, Information Communication and Technology, entertainment, and manufacturing industries, has made the country to be considered as

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<sup>46</sup> Richard C. Levin, Alvin K. Klevorick, Richard R. Nelson, and Sidney G. Winter, 'Appropriating the Returns from Industrial Research and Development' (1987) Brookings Paper-s on Economic Activity 3: 783-831.

<sup>47</sup> Dass Nishant, Vikram Nanda, and Steven C. Xiao, 'Intellectual Property Protection and Financial Markets: Patenting vs. Secrecy' (2015) <<https://www.law.northwestern.edu/researchfaculty/clbe/events/innovation/documents/dassnandaxiao.pdf>> accessed 5 September 2022.

<sup>48</sup> Wesley M. Cohen, Richard R. Nelson, and John P. Walsh, 'Protecting Their Intellectual Assets: Appropriability Conditions and Why U.S. Manufacturing Firms Patent (or Not)' (2000) *NBER Working Papers* 7552, National Bureau of Economic Research, Inc.

<sup>49</sup> Lerner, Josh, 'The Importance of Trade Secrecy: Evidence from Civil Litigation' (1994) Harvard Business School, Working Paper No. 95-043.

one of the world's piracy capitals.<sup>50</sup> Intellectual Property infringement is complemented by the high unemployment rate, lack of appropriate statutes, and the lack of awareness and unwillingness of I.P. owners to enforce their rights. Nigeria is a signatory to the Trade and other Intellectual Property Rights Agreement (TRIPS), which protects trade secrets. However, members of the agreement must make the procedures for enforcement available in their national law to enable right holders to institute an action. At the time of conducting the instant study, Nigeria has no statute that domesticates, defines, and creates a structure for the protection and enforcement of trade secrets. Therefore, trade secrets can only be protected on a contractual basis and therefore enforced as a breach of contract. However, there are statutes in force that have elements of protection of secret information in the economic sector they apply to. These statutes were reviewed in relation to trade secrets and confidential information. Some of which are discussed below.

The Freedom of Information Act 2011 was enacted to make public records and information readily available to any member of the interested public; however, the right to information is not absolute<sup>51</sup>. The Act exempts and protects confidential information which contains trade secrets and commercial or financial information acquired from persons or businesses where such information is privileged<sup>52</sup>. The statistics Act was established to raise awareness of the significance of information to society<sup>53</sup>. The Act establishes a National Statistical System made up of the producers of statistics, data users, data suppliers, and research and training institutions<sup>54</sup>. To guarantee the protection of security information on statistics, the statistics Act states that its provisions do not affect any law relating to the disclosure or non-disclosure of any official secret or confidential information or trade secret<sup>55</sup>. Any data collected for statistical purposes shall be

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<sup>50</sup> Chineze, Sophia Ibekwe, and Celestine, Nnagozie Obunne, 'The WTO-Trips Agreement and Intellectual Property Rights Enforcement in Nigeria' (2020) Nnamdi Azikiwe University Journal of International Law and Jurisprudence 11(1): 84-95.

<sup>51</sup> CBN & ANOR v. PPDC LTD/GTE (2018) LPELR-45856 (CA).

<sup>52</sup> Freedom of Information Act 2011, section 15(1)(b).

<sup>53</sup> Statistics Act Cap S17 LFN 2007.

<sup>54</sup> Statistics Act 2007, Section 1.

<sup>55</sup> Statistics Act 2007, Section 26.

treated as confidential in the sense that the dissemination of the statistics does not permit the identification of the participants of the poll or survey that make up the statistics.

The Public Service Rules, 2007,<sup>56</sup> Nigerian Minerals and Mining Act, 2007,<sup>57</sup> and Personal Income Tax Act, 1993<sup>58</sup> all contain provisions for confidentiality and non-disclosure of information that comes to their knowledge in the course of working in these various sectors of the economy. Although some Nigerian legislations reference the concept of trade secrets or confidentiality, none of them define the concept or state the elements of what should be considered a trade secret. The framework for the protection of trade secrets or the institution of an action for trade secrets in Nigeria seems to be non-existent. This study is concerned with the gap which the lack of laws in Nigeria has caused, empirically examines how it affects Nigerian businesses and how those who owned trade secrets are in need of any appropriate protection.

### **Objectives of the Study**

1. To find out whether food sector organisations have any trade secrets;
2. To identify available legal protection governing trade secret of the organisations without trade secrets;
3. To examine how employees privacy to trade secrets are managed by their organisations;
4. To determine how food sector industry survive without necessary legal protection for trade secrets; and
5. To compare the operations of trade secrets in Nigeria with other branch of the business in another country.

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<sup>56</sup>The Public Service Rules 2007  
<<https://www.nama.gov.ng/PublicServiceRules.pdf>> accessed 31 August 2022

<sup>57</sup>Nigerian Minerals and Mining Act, 2007  
<<http://admin.theiguide.org/Media/Documents/Nigeruian%20Minerals%20and%20Mining%20Act,%202007.pdf>> accessed 31 August 2022.

<sup>58</sup> Personal Income Tax Act 1993 <<https://taxaide.com.ng/files/Personal-Income-Tax-Act-1993.pdf>> accessed 31 August 2022.

### **Research questions**

1. Do food sector businesses in Abuja have trade secrets?
2. Are there organisation's legal protection governing trade secrets?
3. How are employees' privies to trade secrets managed by the organisation?
4. How do companies that need trade secrets survive without the necessary legal protection?
5. Is there notable variance between trade secrets in Nigeria and other branch of the business in another country?

### **Research Methodology**

The study adopts mixed method of research. This involves quantitative and qualitative research designs. Content analysis was also used in sourcing for information for this study. Content analysis is a method of qualitative research whereby a manuscript, text, or speech is examined to investigate the frequently or a particular concept is addressed.<sup>59</sup> In the instant study, the authors conducted the study through interviews which were recorded. Specific attention was paid to the concepts that were repeatedly addressed by the respondents. There are a number of sectors in Nigeria where trade secrets are applicable but for the purpose of this study, the food sector was chosen because it is the easiest, most accessible organisation with trade secrets in Nigeria. Therefore, this study was carried out among selected restaurant in Abuja, the Federal Capital Territory. The FCT, Abuja is a highly commercialised city and it was chosen as the place of study not only because it is the seat of most federal Government Ministries and Agencies, but also for the large influx of businesses, where we have up to five (5) restaurants on a street.

### **Sample**

The sample frame used for the instant study was limited to the food business particularly restaurants such as, cafes, bistros, chain restaurants, eateries, etc. The food industry also has a number of

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<sup>59</sup> Dan Remenyi, 'Researching information systems: Data analysis methodology using content and correspondence analysis' (1992) *Journal of Information Technology* 7(2): 76-86 <[doi.org/10.1177/026839629200700203](https://doi.org/10.1177/026839629200700203)> accessed 10 September 2022.



branches which have trade secrets such as manufacturers of raw materials or the businesses that manufacture drinks and snacks. However, this study is streamlined to restaurants dealing with the mixture of cocktails, preparation of delicacies and sales of food. The sample size of fifty (50) was drawn from the general population randomly to participate in this study, taking into consideration the availability of time and resources. The data collection method used by the researcher in this work was in-depth interview<sup>60</sup>. There are four kinds of interviews in research; structured interview, semi structured interview, in depth interview and focused group discussion.<sup>61</sup> The instant study made use of semi-structured interviews as there were several planned questions which the authors had the liberty to reword, rephrase and explain to the various participants in the study. This instrument was favoured amongst others for this research because it allowed the interviewer collect information with a great level of understanding of the framework on trade secrets in the various restaurants visited. The response rates to the interviews were higher because they were more personal in comparison to questionnaires.

### ***Method of Data Analysis***

The authors filled the interview questions appropriately during and after conversing with the participants. The field work of this research was conducted within the 4<sup>th</sup>, January 2022 to the 9<sup>th</sup> January 2022. The total numbers of restaurants visited were fifty-four (54); those which gave reliable data were fifty (50) in numbers. This made a response rate of 92.8 per cent. Descriptive statistics were used to analyse the research data.<sup>62</sup> Frequency and percentage distribution were conducted on the items in the questions, and this was categorized in different forms to address the research questions raised in the study. All analyses were conducted using SPSS v. 23.

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<sup>60</sup> Dan Remenyi, 'Researching information systems: Data analysis methodology using content and correspondence analysis' (1992) *Journal of Information Technology* 7(2): 76-86 <[doi.org/10.1177/026839629200700203](https://doi.org/10.1177/026839629200700203)> accessed 10 September 2022.

<sup>61</sup> Abawi, Karim, 'Data Collection Instruments' (2014) <<https://www.gfmer.ch/SRH-Course-2013/Geneva-Workshop/pdf/Data-collection-instruments-Abawi-2014.pdf>> accessed 6 May 2022.

<sup>62</sup> Vikas, Yellapu, 'Descriptive statistics' (2018) *International Journal of Academic Medicine* 4(1): 60—63.

### ***Ethical Considerations***

Ethics are sometimes seen as synonymous with morals. They are set of regulations which presuppose the actions of people.<sup>63</sup> In the instant study, consent was taken from each participant on whether they wanted to participate in the survey and whether they did not mind being tape recorded. Some individuals chose not to be involved in the survey at all. While others who consented to participate in the survey agreed to answer the interview questions but refused to consent being recorded. Hence, those classes of participants were also not recorded.

### **Results**

#### ***Research Question 1: Do food sector businesses in Abuja have trade secrets?***

**Table 5.1** shows the responses' knowledge and the presence of trade secrets in organisations. It indicates that 44% of the sampled fifty (50) respondents affirmed they know what trade secrets are, while 56% said otherwise. This means that most respondents do not have detailed knowledge of trade secrets. The test on the statement about the best option that described trade secrets according to their understanding shows that 78% of the respondents said trade secrets are information that needs to be kept secret, 12% said it is information that can affect the running of a company if it was not kept secret, 6% saw it as information which is valuable and needs to be kept a secret, while just 4% said its commercially valuable information. Lastly on this, it was noted that a good number of the respondents (78%) affirmed that there are trade secrets evident in the administration of the affairs of their organisation, while 22% said otherwise. Conclusively, it means that many organisations do have trade secrets.

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<sup>63</sup> Christoph Bartneck, Christoph Lütge, Alan Wagner, and Sean, Welsh, 'An Introduction to Ethics in Robotics and AI' (2021) SpringerBriefs in Ethics. doi: 10.1007/978-3-030-51110-4. ISBN: 978-3-030-51109-8 27-36.

**Table 5.1: Frequency Distribution showing Responses on Statements relating to the Presence of Trade Secrets in Organisations**

Factors	Options	Frequency	%
Do you know what trade secrets are?	No	28	56.0
	Yes	22	44.0
	Total	50	100.0
Which of the options described secret to your knowledge?	Commercially valuable information	2	4.0
	Information which needs to be kept secret	39	78.0
	Information which can affect the running of a company if it is not kept a secret	6	12.0
	Information which is valuable and needs to be kept a secret	3	6.0
	Total	50	100.0
Is there anything like trade secrets evident in the administration of the affairs of this organisation?	No	11	22.0
	Yes	39	78.0
	Total	50	100.0

**Research Question 2: Are There Organisation's Legal Protection Governing Trade Secrets?**

As indicated by the responses in **Table 5.2**, the legal protection for trade secrets in the restaurants surveyed in Abuja, Nigeria, is inadequate. This result shows that 14 % of 50 respondents had no trade secrets to protect in their organisations, while 86 % had trade secrets. Of 86 % with trade secrets, only 6 % of the respondents had legal protection for their trade secrets, and 80 % had no legal protection. This implies that most organisations with trade secrets do not have any legal protection for these secrets.

**Table 5.2: Frequency Distribution showing the Presence of Legal Protection Governing Trade Secrets in Organisations**

Factors	Options	Frequency	%
Is there any legal protection for the trade secrets you have in your business?	No	40	80.0
	Yes	3	6.0
	No trade secrets	7	14.0
	Total	50	100.0

**Research Question 3: How Are Employees' Privy to Trade Secrets Managed by The Organisation?**

To determine how the organisation manages employees who are privy to trade secrets they work for, a frequency table was used and presented in (Table 5.3) 78.0 % of the respondents have never had a case of misappropriated trade secrets in their organisation, while 4 % managed trade secret misappropriation through litigation

This shows that although the level of trade secret protection is relatively low, trade secret misappropriation is also very low. This may be due to the lack of commercial value attached to trade secrets among the surveyed organisations.

**Table 5.3: Frequency Distribution showing how employees are privy to trade secrets**

Factors	Options	Frequency	%
How was a situation of trade secrets misappropriation handled in your organisation?	Through litigation	2	4.0
	No misappropriation of trade secrets	39	78.0
	No justice/ step taken	8	16.0
	Prayer	1	2.0
Total		50	100.0

**Research Question 4: How Do Companies That Need Trade Secrets Survive without the Necessary Legal Protection?**

To examine this question, a frequency Table was used to depict how companies that need trade secrets protection in Nigeria survive without the necessary legal framework. The aspect of the respondents' business where trade secrets could be found ranges from recipes to

methods of production and procedure for production. Results of the analysis showed that 21 % of the respondents protected their trade secrets with the use of non-disclosure agreements or memorandum of understanding, while 73.7% of the respondents do not have any system for protecting their trade secrets. See **Table 5.4**. This shows that, to a large extent, the lack of a legal framework for trade secrets protection in Nigeria affects the rate of the protection of trade secrets in the Nigerian restaurant organisations.

**Table 5.4.: Frequency Distribution Showing How Companies That Need Trade Secrets Survive Without the Necessary Legal Protection**

Factors	Options	How well is trade secret required in your organisation?					
		Great Extent		An Extent		Total	
		F	%	F	%	F	%
In what aspect of your business do you have trade secrets?	Recipes of production	9	64.3	5	35.7	14	73.7
	Methods of production	1	33.4	2	66.6	3	15.8
	Procedures of production	0	0.0	2	100.0	2	10.5
	Total	10	52.6	9	47.4	19	100.0
How are these trade secrets, which keep your business running protected?	Not protected information	6	54.5	5	45.5	11	57.9
	Sealed by a signed non-disclosure agreement	0	0.0	3	100.0	3	15.7
	Company policy	1	100.0	0	0.0	1	5.3
	Undisclosed	3	75.0	1	25.0	4	21.1
	Total	10	52.6	9	47.4	19	100.0
Is your staff aware of what trade secrets are?	No	2	50.0	2	50.0	4	21.0
	Yes	8	57.1	6	42.9	14	73.7
	No trade secrets	0	0.0	1	100.0	1	5.3
	Total	10	52.6	9	47.4	19	100.0

How are your trade secrets protected in relation to staff turnover?	Sealed by a signed non-disclosure agreement	1	33.3	2	66.7	3	15.7
	Sealed by memorandum of understanding	1	100.0	0	0.0	1	5.3
	Not protected	8	57.1	6	42.9	14	73.7
	No trade secrets	0	0.0	1	100.0	1	5.3
	Total	10	52.6	9	47.4	19	100.0
What are the measures put in place to protect the trade secrets in the knowledge of staff?	No measures provided	8	61.5	5	38.5	13	68.4
	Signing of non-disclosure agreement	1	33.3	2	66.7	3	15.7
	Company's policy	0	0.0	1	100.0	1	5.3
	No knowledge	0	0.0	1	100.0	1	5.3
	Undisclosed	1	100.0	0	0.0	1	5.3
	Total	10	52.6	9	47.4	19	100.0

**Research Question 5: Is there notable variance between trade secrets in Nigeria and other branch of the business in another country?**

Table 5.5 illustrates the difference between trade secret protection in Nigerian companies and their branches across other countries. Out of the respondents, 8 % of the respondents have branches abroad. Of this 8%, 4 % have a method of protection that differs from Nigeria's branch operation.

**Table 5.5: Frequency Distribution Showing Notable Variance Between Trade Secrets in Nigeria and the Other Countries**

Factors	Options	Frequency	%
Do you have branches in other countries which have formal methods of trade secrets protection?	No	40	80.0
	Yes	4	8.0
	No trade secrets	6	12.0
	Total	50	100.0

If you say 'yes' to question 17, do the system over there differ from protection in your Nigerian branch(es)?	No	8	16.0
	Yes	2	4.0
	No trade secrets	2	4.0
	I chose 'No' above	38	76.0
	Total	50	100.0

## Discussions

### ***Research Question 1: Do food sector businesses in Abuja have trade secrets?***

Based on the findings of this study, Nigerian organisations have trade secrets. It was observed that many of the respondents in this study did not necessarily know the 'nomenclature' trade secrets. However, they described certain components within their organisations which made up trade secrets; information about their processes, recipes, and systems that they were not allowed to share with others. This finding is in conformity with the study of Saredau, Gupar and Chalawa,<sup>64</sup> where they found that virtually every business organisation ranging from sole proprietorships to small businesses have trade secrets that require protection. The instant study establishes that Nigerian organisations are not exempted.

### ***Research Question 2: Are there Organisation's Legal Protection Governing Trade Secrets?***

From the instant survey, it reveals that there is no legal protection by organisations to protect their trade secrets. This finding is in line with the study conducted by Omoniyi,<sup>65</sup> where it was found that Nigeria lacks definite legislation protecting or regulating trade secrets. Of the

<sup>64</sup> Daniel, P. Saredau, Walmak Gupar, and Bashir M. Chalawa, 'The legal regime for protection of trade secrets in Nigeria: Breach of confidence claim as gap-filler' (2020) Nnamdi Azikiwe University Journal of Commercial and Property Law 7(1): 158-168.

<sup>65</sup> Gabriel, Omoniyi, 'Nigeria: Protections: A Commentary on Trade Secrets in Nigeria' (2021)

<<https://www.mondaq.com/nigeria/trademark/1041406/protections-a-commentary-on-trade-secrets-in-nigeria>> accessed 22 June 2022.

majority surveyed, this study found that the reason for the lack of protection by the employer could be ascribed to the fact that the trade secrets belong to the employees and not the organisation. However, the percentage of such participant is indefinite as no direct question was asked on that, a gap for further study. Hence, the trade secrets of most restaurants surveyed belongs to the Chef, and in the event of the Chef exit for another restaurant, he or she leaves with the secrets. In contrast, Omoniyi's study found that the trade secret is owned by the employer and needs to be shared with the employee or business partner for it to be protected and attracts commercial value.

***Research Question 3: How Are Employees' Privy to Trade Secrets Managed by the Organisation?***

This study revealed the systems that various Nigerian organisations adopt in protecting their trade secrets. However, this system varies from organisation to organisation. In the chain restaurants, it was observed that trade secrets were protected by the employers by non-disclosure of recipes. The employers would prepare the ingredients of the food in a separate place and deliver them in unlabelled packets to where the food is prepared. The employees are only privy to the processes and order in which these ingredients are to be mixed to achieve a satisfying result, but they are not aware of the content of the ingredients.

Another system used by other restaurants was the use of force. The employers enjoined the use of the Nigerian Police Force to warn the employees of the repercussions of absconding with the trade secrets of their employers. These repercussions included imprisonment, seizure of property, etc. Furthermore, employers also used incentives to retain their employees. They believed that treating employees well would increase productivity while reducing the likelihood of their employees engaging in theft of their information. They employed processes like retreats, stipends, respectfulness, insurance, etc. This goes in line with the assertion that companies are to take steps to safeguard the information that is valuable.<sup>66</sup> It is evidence that Nigerian companies with trade secrets take all steps to protect their trade secrets

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<sup>66</sup> Deborah E. Bouchoux, *Intellectual Property: The law of trademarks, copyrights, patents and trade secrets* (Fourth Edition, Delmar Cenage Learning, 2012)



***Research Question 4: How Do Companies that Need Trade Secrets Survive without the Necessary Legal Protection?***

The most notable of the systems of survival of organisations without trade secret protection was the belief in supernatural beings. Most of the respondents believed that the success of their business is not attributable to trade secrets but the Deity they serve. Some believed that even with the knowledge of their trade secrets, their success would still be secure. According to one of the participants, 'my grace is different from your grace. So, even if you know my secrets, you cannot run down my business.' In the words of another participant, 'I believe that there is a strong relationship between food and love. The love I have for food was given to me by Allah. So, even with the knowledge of my trade secrets, you cannot recreate what my hands can recreate because Allah did not give anyone else the love for food, he gave me.' The above is a representation of the mindset of most of the participants interviewed who believe that their business success is owed to their Deity.

Another fact is that the restaurants did not rely on trade secrets. The participants believed that the attractiveness of their business was owed to more than trade secrets. Several participants believed that their customer service was more important than trade secrets. To the participants, the satisfaction of a customer was to a large extent, owed to the way they are treated when they visit. This finding is in conformity with the studies conducted by Suchman and Severance where they found that inventors attached the protection of their trade secrets to the notion of magic (pre-literate society) because the lack of a structural framework for trade secret protection.<sup>67</sup>

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<[https://mitmecsept.files.wordpress.com/2018/10/deborah\\_e\\_bouchoux\\_intellectual\\_property\\_the\\_lbookzz-org.pdf](https://mitmecsept.files.wordpress.com/2018/10/deborah_e_bouchoux_intellectual_property_the_lbookzz-org.pdf)> accessed 10 September 2022

<sup>67</sup> Suchman, Mark C, 'Invention and Ritual: Notes on the Interrelation of Magic and Intellectual Property in Preliterate Societies' (1989) Columbia. Law Review 89: pp 1264, 1272, 1283; Severance, Dominick, 'A General History of Western Trade Secret Law from the Time of Preliterate Society to Today - Pt. 1 [IP News]' (2013)

<[https://students.law.ucdavis.edu/ip/ip\\_news/posts/tradesecretlawpt1.html](https://students.law.ucdavis.edu/ip/ip_news/posts/tradesecretlawpt1.html)> accessed 5 September, 2022

***Research Question 5: Is there notable variance between trade secrets in Nigeria and other branch of the business in another country?***

From the survey carried out by the authors, most of the participants did not have branches in other countries. Those that had branches in other countries did not have methods of protection that varied from what could be found in Nigeria

**Limitations of Study**

The limitations of a study are issues beyond the control of the researcher which can affect the outcome of the research.<sup>68</sup> The limitations may be theoretical or in relation to the methodology used to carry out the research. A limitation of this study is the fact that restaurants are generally very noisy and busy places. The research methodology used in this study was interviews, supported by tape recordings. However, some of the tape recordings are overshadowed by the music being played at the restaurants and that rendered some responses invalid for the study, as the responses were not audible enough. If this were foreseen by the authors, the recording method would have been substituted for another. In terms of comparability, the authors could access only a few studies, and some are very old.

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<sup>68</sup> Baron, Mark A, 'Guidelines for Writing Research Proposals and Dissertations' (2009)

<[http://www.regent.edu/acad/schedu/pdfs/residency/su09/dissertation\\_guideline\\_s.pdf](http://www.regent.edu/acad/schedu/pdfs/residency/su09/dissertation_guideline_s.pdf) > accessed 6 May 2022

## Conclusion and Recommendations

The restaurants in the Nigerian business sector were surveyed to shed more light on the prevalence and relevance of trade secrets and trade secret protection in Nigeria with a view to recommending possible measures to be adopted in addressing the problems found. The findings of this study have not only shed light on trade secret perception in Nigeria but on the concept of trade secrets. The study reveals that trade secret protection does not necessarily have to be by legislation. The judiciary can take up an important role to protect trade secrets by applying the rules of common law and equity to create case laws and judicial precedents, which can be subsequently relied on by litigants. Furthermore, this study found that trade secrets do not only belong to the employers, but they often belong to the employees. And employees may move from organisation to organisation with their trade secrets. Also, the study uncovers that Nigeria operates a pre-literate level in respect of their trade secret protection by attributing the success of their business and trade secrets protection to supernatural beings.

Lastly, this study found that while trade secrets may exist in Nigeria, the commercial value of such information is not widely acknowledged. Businesses clearly recognise its presence and importance, but they do not see such information as independently valuable. The relevancy of the concept to businesses ranks low in the sector surveyed. This leaves questions unanswered as to whether this secret information can count as a trade secret if they are not viewed as commercially valuable. Is there a difference between information having commercial value and an organisation recognising that information has commercial value in relation to trade secrets, a gap for further study? The authors conclude that while trade secrets are prevalent in the Nigerian business sector, they were not seen as relevant in contrast to the legal regimes in other countries. The legal maxim is *Ubi jus ibi remedium* –meaning that where there is wrong, there must be a remedy. However, the fact that trade secret misappropriation is yet to be identified as a legal wrong in Nigeria leaves the wrong without an appropriate remedy. Therefore, the major problem relating to the prevalence and relevance of trade secrets in Nigeria is caused by the lack of legal framework. The creation of a legal framework will be the beginning of the end of the problems

highlighted in this study. Base on the findings of this survey, the author put forward the following recommendations are suggested to improve the legal and institutional framework of trade secrets in Nigeria:

***Domestication of the International Treaties***

Nigeria is a signatory to the Agreement on the Trade-Related aspect of Intellectual Property Rights. This is one of the most significant international treaties that provide the framework for the protection of trade secrets. However, these provisions are not applicable until they are domesticated by the Nigerian National Assembly. Domestication of these provisions will be the beginning of fruitful protection of trade secrets in Nigeria. It is therefore recommended that these treaties should be domesticated as soon as possible by the National Assembly.”

***Creation of a Uniform National Law that provides clear provisions on trade secrets***

For there to be adequate protection of trade secrets, it is important for there to be a comprehensive law that applies to trade secrets in Nigeria. To achieve maximum effect, this law should clearly state the definition of trade secrets, the items which qualify to be trade secrets, the ingredients of trade secrets misappropriation, and the adequate procedure to institute an action where trade secrets misappropriation occurs.

***Encouraging the use of Common Law and Equity principles to protect trade secrets***

Nigeria is not the only country without trade secrets legislation. However, in countries like South Africa and India, trade secrets are protected by Common Law and the Principles of Equity against unfair competition. Therefore, even where there is no law to apply to the subject matter, Nigerian courts can look to Common Law and Equity to ensure justice for all.

***Trade secret misappropriation should attract both civil remedies and criminal sanctions***

The United States of America is regarded to have strongest threshold for trade secrets protection in the world. This owes largely to the fact

that trade secret misappropriation is punishable as a crime and as a civil wrong. Therefore, Nigeria should take a page out of the book of the U.S to protect trade secrets adequately.

***The National Orientation Agency should embark on massive outreaches to businesses to educate them on the relevance and importance of trade secret protection***

Lack of awareness of the value and importance of trade secrets plays a hand in the lack of legal framework for trade secrets in Nigeria. If more businesses were aware of the importance of trade secrets to their organisation, as well as the possibility of justice in the instance of trade secrets misappropriation, there would be a clamour for the National Assembly to make laws on the subject. Therefore, the Agency should be up and doing in educating both small scale business and large scale businesses on the importance of trade secret.”

***Businesses should develop trade secrets policies and integrate them into the code of conduct of the company***

It must be noted that the first instance of the protection of trade secrets is by its owner. For the government to protect trade secrets, its owner must have taken deliberate steps to protect trade secrets as well. Therefore, more companies should act at the firm level and put physical and digital measures in place to ensure trade secrets protection.