

SUMMARY

Key Words: information, trade secret, civil law object, confidentiality.

Subject matter: Commercial secret as an object of civil law

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The relevance of the research topic. Information that constitutes a commercial secret has a greater commercial value, and by virtue of its nature, it provides its owner, under existing or other circumstances, with the opportunity to increase income, avoid unjustified expenses, maintain a position in the market of goods, works, services, or obtain other commercial benefits that are also unknown to a wide range of people. The importance of information constituting a trade secret is evidenced by the fact that one of the conditions for the country's accession to the WTO was to bring its domestic legislation into line with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This agreement, in particular, provides for the need for the WTO member States to create effective mechanisms for protecting the rights of holders of classified commercially significant information. The adoption of the Federal Law "On Commercial Secrets" (hereinafter referred to as the Law) contributed to the final formation of the institution of commercial secrets, as well as bringing the current legislation in line with the provisions of TRIPS. At the same time, the absolute novelty of regulated relations gives rise to a huge number of theoretical problems, the ambiguity of the solution of which causes significant difficulties in their practical application. All this, as well as the virtually complete absence of judicial practice on the protection of information constituting a commercial secret, does not contribute to the spread of the institution of commercial secrets in the Russian Federation, which, in turn, has a significant impact on the investment attractiveness of the country in the eyes of foreign partners.

The purpose of the work: analysis of the civil law regulation of the Institute of commercial secrets.

Objective: to reveal the legal nature of a commercial secret and its concept; to disclose the properties of information constituting a commercial secret; to determine the place of information constituting a commercial secret among the objects of civil rights; to characterize the range of subjects of the right to trade secrets; to investigate commercial secrets in the system of civil law relations; to analyze the legal basis for ensuring the confidentiality of information within the framework of civil law relations; to characterize certain types of civil contracts, the subject of which is a commercial secret; to consider the mechanism of civil liability for violation of the right to a commercial secret.

The theoretical and practical significance of the research The theoretical significance of the study lies in the possibility of its use. its main provisions in the process of teaching and studying courses "Civil Law" and "Information Law".

The practical significance of the study lies in the fact that a number of provisions can be included in the substantiation of proposals for improving the Russian civil legislation on commercial secrets, as well as for increasing the efficiency of its implementation.

Results of the study:

1. A commercial secret is information in respect of which the legislation does not provide for the obligation to provide at the request of persons who are not obliged to respect its confidentiality, which allows its owner to increase income, avoid unjustified expenses, maintain a position on the market of goods, works, services or receive other commercial benefits, and in respect of which measures have been taken to protect confidentiality. Information can be recognized as a trade secret if it or its identifying features are recorded on a tangible medium that is accessible to perception.

2. The characteristics to be met by information constituting a trade secret: the absence of a

legally established obligation to provide information at the request of persons who are not obliged to respect its confidentiality; the commercial value of information that allows its owner to increase income, avoid unjustified expenses, maintain a position on the market of goods, works, services or receive other commercial benefits; taking measures to protect the confidentiality of this information.

3. A trade secret is too "unconventional an object" to be classified as intellectual property and other exclusive rights. The trend of defining the concept of "commercial secret", which combines the secret of production (know-how) and commercial information, is revealed.

4. Individuals and legal entities engaged in entrepreneurial activities may act as subjects of the right to trade secrets. Persons who have received such information by virtue of a law, contract or employment relationship with the owner of a trade secret are obliged to respect the confidentiality of the information received, and may use it within the limits established by the owner of a trade secret.

5. From the rights and obligations of the owner of a trade secret, it is necessary to exclude the indication as an independent authority of the order and conditions of access to information constituting a trade secret. These actions, in accordance with Article 10 of the Law, relate to the measures to protect the confidentiality of information that its owner must take when extending the commercial secret regime to information, and are an integral part of the right to establish, change and cancel the commercial secret regime.

6. The method of protection of subjective civil rights to a commercial secret should be understood as the material and legal measures of a coercive nature, stipulated in the legislation on commercial secrets, through which the restoration (recognition) of violated (disputed) rights and the impact on the violator are made. The choice of the method of protecting commercial secrets is determined by the specifics of this right and the nature of the offense in this area of public relations.

7. Civil law violations in the field of commercial secrets should be understood as violations of the norms of Chapter 75 of Part four of the Civil Code of the Russian Federation, the Law on Commercial Secrets and other legal acts regulating relations for obtaining, using commercial secrets (production secrets) and disposing of the right to use it, as well as violations of the right of access to such information.

8. When compensating for losses caused to the owner of information constituting a trade secret, the main problem is to prove their size. The owners of commercial secrets are invited to indicate the value of the information classified as a commercial secret in monetary terms when determining the list of its constituent information, as well as to conclude civil law agreements on non-disclosure of the information received, which provide for liability for non-performance of this obligation in the form of a penalty in a fixed amount.

Recommendations:

1. To address the issue of the relationship between various types of secrets and eliminate a number of gaps in legislation, it is necessary to adopt a federal law on confidential information. The law should clearly define the concept of confidential information and a list of confidential information, reflect the basic principles of legal regulation of confidential information, requirements, procedure, organization of work with documents, protection system for all types of confidential information, address issues of disposal of confidential information, financing of measures to protect it, control and supervision over ensuring its protection.

2. In order to fill the gap in the legislation, it is necessary in the Civil Code of the Russian Federation to fix the norm concerning the contractual procedure for the transfer of information constituting a commercial secret to state authorities and local self-government bodies. This agreement, from the point of view of the author, should be on a par with other civil agreements. Moreover, in this norm, it is necessary to clarify both the types of liability for disclosure and illegal use of information constituting a commercial secret.

3. To amend art. 10 of the Law, excluding part 5, since the provisions contained in it do not ensure the adequacy of measures to protect the confidentiality of information of its value. Part 1

shall be stated as follows: "Measures to protect the confidentiality of information taken by its owner must correspond to the value of the protected information, indicate the desire to keep this information secret and include: determination of the list of information constituting a commercial secret; restricting access to information constituting a commercial secret by establishing a procedure for handling this information and monitoring compliance with this procedure; registration of persons who have gained access to information constituting a commercial secret and (or) persons to whom such information was provided or transferred; regulation of relations on the use of information constituting a commercial secret by employees on the basis of labor contracts and counterparties on the basis of civil law contracts; drawing on material carriers (documents) containing information constituting a commercial secret, the stamp "Commercial secret" indicating the owner of this information (for legal entities - the full name and location, for individual entrepreneurs - the surname, name, patronymic of a citizen who is an individual entrepreneur , and place of residence) ".

4. To amend the Federal Law "On Information, Information Technologies and Information Protection", including in Art. 2 point 7.1. "Confidential information (secret) - information recorded on a tangible medium, access to which is limited in accordance with the legislation of the Russian Federation."