

Appendix H

Victim Referral and Witness Interview Forms

The forms on the following pages were first published in the Department of Justice's Report of the Department of Justice's Task Force on Intellectual Property, App. C (Oct. 2004), and are adapted below with minor additions. The forms are useful as a checklist for prosecutors and investigators to gather information from victims or for victims to fill out on their own. There are two forms: one that can be used in copyright and trademark/service mark/certification mark cases, and another that can be used in trade secret cases. They can be adapted for use in other intellectual property offenses as well.

A. Checklist for Copyright Infringement and Counterfeit Trademark/Service Mark/Certification Mark Offenses

Background and Contact Information

1. Victim's Name:
2. Primary Address:
3. Nature of Business:
4. Contact:
 Phone: Fax:
 E-mail: Pager/Mobile:

Description of the Intellectual Property

5. Describe the copyrighted material or trademark/service mark/certification mark (e.g., title of copyrighted work, identity of logo), including any factors that make its infringement specially problematic (e.g., pre-release piracy, threats to public health and safety).

6. Is the work or mark registered with the U.S. Copyright Office or on the principal register of the U.S. Patent and Trademark Office?

___ YES ___ NO

a. If so, please provide the following:

i. Registration Date:

ii. Registration Number:

iii. Do you have a copy of the certificate of registration?

iv. Has the work or mark been the subject of a previous civil or criminal enforcement action? If so, please provide a general description.

b. If not, state if and when you intend to register.

7. What is the approximate retail value of the infringed work, good, or service?

Description of the Intellectual Property Crime

8. Describe how the theft or counterfeiting was discovered.

9. Do you have any examination reports of the infringing or counterfeit goods?

___ YES ___ NO

If so, please provide those reports to law enforcement.

10. Describe the scope of the infringing operation:

a. Estimated quantity of illegal distribution:

b. Estimated value of illegal distribution:

b. Estimated time period of illegal distribution:

c. Is the illegal distribution national or international? Which states or countries?

11. Identify where the infringement or counterfeiting occurred, and describe the location.

12. Identify the name(s) or location(s) of possible suspects, including the following information:
 - Name (Suspect #1):
 - Phone number:
 - E-mail address:
 - Physical address:
 - Current employer, if known:
 - Reason for suspicion:

 - Name (Suspect #1):
 - Phone number:
 - E-mail address:
 - Physical address:
 - Current employer, if known:
 - Reason for suspicion:

13. If the distribution of infringing or counterfeit goods involves the Internet (e.g., World Wide Web, FTP, e-mail, chat rooms), identify the following:
 - a. The type of Internet theft:
 - b. Internet address, including linking sites (domain name, URL, IP address, e-mail):
 - c. Login or password for site:
 - d. Operators of site, if known:

14. If you have conducted an internal investigation into the theft or counterfeiting activities, please describe any evidence acquired and submit, if possible, any investigative reports:

Civil Enforcement Proceedings

15. Has a civil enforcement action been filed against the suspects identified above?

___ YES ___ NO

- a. If so, identify the following:
 - i. Name of court and case number:
 - ii. Date of filing:
 - iii. Names of attorneys:
 - iv. Status of case:
- b. If not, is a civil action contemplated? What type and when?

16. Please provide any information concerning the suspected crime not described above that you believe might assist law enforcement.

B. Checklist for Trade Secret Offenses

NOTE ON CONFIDENTIALITY: Federal law provides that courts "shall enter such orders and take such action as may be necessary and appropriate to preserve the confidentiality of trade secrets, consistent with the requirements of the Federal Rules of Criminal and Civil Procedure, the Federal Rules of Evidence, and all other applicable laws." 18 U.S.C. § 1835. Prosecutors utilizing any of the information set forth below will generally request the court to enter an order to preserve the status of the information as a trade secret and prevent its unnecessary and harmful disclosure.

Background and Contact Information

1. Victim's Name:
2. Primary Location and Address:
3. Nature of Primary Business:

4. Law Enforcement Contact:

Phone: Fax:
E-mail: Pager/Mobile:

Description of the Trade Secret

5. Generally describe the trade secret (e.g., source code, formula, technology, device).

Provide an estimated value of the trade secret identifying ONE of the methods and indicating ONE of the ranges listed below:

Estimated value	Method
_____	Cost to develop the trade secret
_____	Acquisition cost (identify date and source of acquisition)
_____	Fair market value if sold

Identify a person knowledgeable about valuation, including that person's contact information.

General Physical Measures Taken to Protect the Trade Secret

6. Describe the general physical security precautions taken by the company, such as fencing the perimeter of the premises, visitor control systems, using alarming or self-locking doors or security personnel.
7. Has the company established physical barriers to prevent unauthorized viewing or access to the trade secret, such as locked storage facilities or "Authorized Personnel Only" signs at access points? (See below if computer stored trade secret.)
___YES ___NO
8. Does the company require sign in/out procedures for access to and return of trade secret materials?
___YES ___NO

9. Are employees required to wear identification badges?

___ YES ___ NO

10. Does the company have a written security policy?

___ YES ___ NO

a. How are employees advised of the security policy?

b. Are employees required to sign a written acknowledgment of the security policy?

___ YES ___ NO

c. Identify the person most knowledgeable about matters relating to the security policy, including title and contact information.

11. How many employees have access to the trade secret?

12. Was access to the trade secret limited to a "need to know" basis?

___ YES ___ NO

If so, describe how "need to know" was maintained in any ways not identified elsewhere (e.g., closed meetings, splitting tasks between employees and/or vendors to restrict knowledge, etc.):

Confidentiality and Non-Disclosure Agreements

13. Does the company enter into confidentiality and non-disclosure agreements with employees and third-parties concerning the trade secret?

___ YES ___ NO

14. Has the company established and distributed written confidentiality policies to all employees?

___ YES ___ NO

15. Does the company have a policy for advising company employees regarding the company's trade secrets?

___ YES ___ NO

Computer-Stored Trade Secrets

16. If the trade secret is computer source code or other computer-stored information, how is access regulated (e.g., are employees given unique user names, passwords, and computer storage space, and was the information encrypted)?
17. If the company stores the trade secret on a computer network, is the network protected by a firewall?
___ YES ___ NO
18. Is remote access permitted into the computer network?
___ YES ___ NO
19. Is the trade secret maintained on a separate computer server?
___ YES ___ NO
20. Does the company prohibit employees from bringing outside computer programs or storage media to the premises?
___ YES ___ NO
21. Does the company maintain electronic access records such as computer logs?
___ YES ___ NO

Document Control

22. If the trade secret consists of documents, were they clearly marked "CONFIDENTIAL" or "PROPRIETARY"?
___ YES ___ NO
23. Describe the document control procedures employed by the company, such as limiting access and sign in/out policies.

24. Was there a written policy concerning document control procedures?

___ YES ___ NO

If so, how were employees advised of it?

25. Identify the person most knowledgeable about the document control procedures, including title and contact information.

Employee Controls

26. Are new employees subject to a background investigation?

___ YES ___ NO

27. Does the company hold "exit interviews" to remind departing employees of their obligation not to disclose trade secrets?

___ YES ___ NO

Description of the Theft of Trade Secret

28. Identify the name(s) or location(s) of possible suspects, including the following information:

Name (Suspect #1):

Phone number:

E-mail address:

Physical address:

Employer:

Reason for suspicion:

Name (Suspect #2):

Phone number:

E-mail address:

Physical address:

Employer:

Reason for suspicion:

29. Was the trade secret stolen to benefit a third party, such as a competitor or another business?

___ YES ___ NO

If so, identify that business and its location.

30. Do you have any information that the theft of trade secrets were committed to benefit a foreign government or instrumentality of a foreign government?

___ YES ___ NO

If so, identify the foreign government or instrumentality and describe that information.

31. If the suspect is a current or former employee, describe all confidentiality and non-disclosure agreements in effect.

32. Identify any physical locations associated with the theft of trade secret, such as where it may be currently stored or used.

33. If you have conducted an internal investigation into the theft or counterfeiting activities, please describe any evidence acquired and provide any investigative reports that you can.

Civil Enforcement Proceedings

34. Has a civil enforcement action been filed against the suspects identified above?

___ YES ___ NO

a. If so, identify the following:

i. Name of court and case number:

ii. Date of filing:

iii. Names of attorneys:

iv. Status of case:

b. If not, is a civil action contemplated?

___ YES ___ NO

What type and when?

35. Please provide any information concerning the suspected crime not described above that you believe might assist law enforcement.