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Implications of Covid-19 on Intellectual Property Rights: Case study of Unfair Competition and Restraint to trade

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Abstract

This study examines how Covid-19 pandemic affects business owners' intellectual property rights, enhances unfair labor competition, and violates the principle of restraint to trade. The authors adopted the doctrinal research methodology. It involves a systematic review of legal propositions, cases, statutes, rules, regulations, legislation, and text-books. It researches law and legal concepts that are identical to the jurisdictions operating under Common Law System. This method focuses more on secondary data due to its theoretical structure. The study notes that employees transitioning to working from home have exposed companies' confidential information to theft, danger and cyber-crimes. Consequentially weakens the implementation of the principle of restraint to trade agreement signed by the employees and makes businesses vulnerable to unfair competition. The study recommends that the best protective practices and internal policies be adopted by companies to safeguard trade secrets within and outside the offices in to mitigate litigation on restraint to trade infringement and unfair labor competition.

Keywords: Employment; Intellectual property rights; Covid-19; Restraint to trade; Unfair Labor Competition

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Introduction

In examining the effect of covid-19 on businesses and intellectual property rights of business owners, this article is divided into two sections; the first discusses unfair labor competition and the second addresses the issue of restraint to trade related to intellectual property rights.

Unfair Competition

The rampant usage of dishonest and unjust practices parallels the growth of commerce in any society. The rivalry of various enterprises in the modern age has resulted in an immediate increase in fraudulent ways of competing for the most profit. There have been many attempts all over the works to reduce and ultimately end unfair commercial practices and foster honest trading.[1] Unfair competition can be defined as a situation involving the deceptive use of another person's trade practices to achieve a competitive benefit.[2] The Paris Convention is an international law that provides for unfair competition. The Paris Convention, (1967) Article 10b provides that every party to the convention creates domestic laws within their various boundaries to protect their citizens and their business sectors. It also provides a brief definition of the concept in subsection.[3]

It states thus;

(1) The Union's member nations are obligated to provide appropriate protection against unfair competition to their citizens.
(2) Any act of rivalry differing from the sincere practice in manufacturing or business matters constitutes an act of unfair competition.

Article 10 (3) makes specifications on the particular acts which constitute unfair competition that is to be banned:

1. "All acts of such a nature as to create confusion, by any means, with the establishment, the goods, or the industrial or commercial activities, of a competitor;
2. false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;
3. indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods".[4]

The law of unfair competition is based on the idea that persons are secured from misleading and inappropriate manner in business sectors. The law of unfair

[1] Haines, G. Charles (1919). Efforts to Define Unfair Competition. Yale Law Journal, XXIX(1) 1 28.
[2] Upcounsel Technologies Inc, 'Unfair competition: Everything you need to know' <https://www.upcounsel.com/unfair-competition> accessed 5th July 2021
[3] Norton, V. Patricia (1999). The Effect of Article 10bis of the Paris Convention on American Unfair Competition Law, Fordham Law Review, 68(1), 225. Available at: https://ir.lawnet.fordham.edu/flr/vol68/iss1/7
[4] Module 9: Unfair Competition <http://www.cambodiaip.gov.kh/DocResources/8e5faff3-d85f-4c6e-99b9-7c02edbb76ef_007729c5-60a9-47f0-83ac-7f70420b9a34-en.pdf> accessed 6th July 2021

competition evolves as there are multiple business methods, including offers and sales through telemarketing, television infomercials, and the internet. A vast collection of theories and events is used by wounded parties to guard themselves from unfair competition. Unfair competition is a law created to protect both competitors and consumers. The remedies in place are designed to safeguard intangible interests, including those in one's business status, benevolence, etc. based on that, unfair labor competition laws guard intellectual property instead of physical or actual property and promote an efficient and effective business environment.

In most cases, unfair competition is combined with additional claims such as trademark, copyright, or patent infringement to offer the plaintiff a broad range of available remedies. Because of the costs and the short life cycle of fashion items, a designer of scarves embossed with imaginative graphics may opt without applying for a design patent. This indicates that unfair competition laws protect the infringement of designs in place of the protection contained under design patent law. 15 U.S.C. 1125, Lanham Act Section 43, provides for a Federal cause of action to guard consumers against unjust competitive trade practices. Unjust completion laws are created for a vast array of reasons: the protection of business sectors. The rules enable companies to differentiate between products that are theirs and that of others. Without these laws, it would be nearly impracticable to set up a company with distinctive aspects to distinguish it from other companies. This would then lead to hardship concerning the maintenance of brand loyalty. Other companies would create various identical products purposely made to confuse the clients. Some of the purposes of unfair competition laws include;

a. Assisting businesses with the protection of economic and creative investments made for the furtherance of the business
b. Perseverance of goodwill between businesses and their customers
c. Promotion of stability in the business sector and clarity by making all products clear to the consumers
d. Deterrence from companies from the theft of ideas and the appropriation of the goodwill of other vendors
e. Increase the competition amongst companies with comparable industries by giving incentives to provide better products and services.[5]

Types of Unfair Competition

The most typical forms of unfair competition are as follows:

1. **Passing Off:**

This is an action in tort that occurs when a person attempts to misrepresent, confuse or deceive potential buyers by trading their goods as that of another or complaining ownership of another person's goods to deceive potential customers into believing that the goods bought are the same as the original product or produced by the same company.[6] See these Nigerian cases where the court defined

[5] Ibid

[6] T & A Legal. Nigeria: An Appraisal of Passing off Actions under Nigerian Law. (5 June, 2018), <https://www.mondaq.com/nigeria/trademark/704160/an-appraisal-of-passing-off-actions-under-nigerian-law> accessed 7 December 2021

passing off on several instances based on similarity to trade name, businesses, and trademark or trade designs. *Trebor Nigeria Limited v. Associated Industries Limited* (1972) NNLR 60 *(similarity in packaging designs), Niger Chemists Limited and Nigeria Chemists (1961) ANLR 180 (similarity in names).*

2. **Misappropriation:**

This occurs when another person's property is used or possessed without the owner's license who spent sweat and effort creating such work. Misappropriation doctrine is a type of unfair labor competition that came up in the case of International News Service v. Associated Press, 248 U.S. 215 (1918). The crux of the matter was whether an action could be brought against the defendant for the infringement of unregistered copyright? The Supreme Court held that unauthorized use of another's property, which time, sweat, effort and money has been invested in the creation was actionable as infringement or misappropriation. In this case, information compiled by the Associated Press concerning World War 1 was copied illegally by International News Service and traded to its customers. On the ground that the news, which was the subject of this suit, was not copyrighted. According to the Supreme Court, the defendant was "attempting to reap where it has not sow and taken to itself the fruit of those who have sown". A passing off suit would not lie since the defendants were not intending to persuade their subscribers that the plaintiff discovered or generated the reports. As a result, the defendant in this case misappropriated rather than misleading.

3. **Right of publicity:**

This right means the protection of one's name, identity, voice, likeness and persona against commercial exploitation. In *Carson v Here's Johnny Portable Toilets 698 F.2d 831 (6th Cir 1983),* in the course of advertising its services, a moveable toilet company was banned from using the phrase "Here's Johnny" by a Court because, that phrase has been recognized with the entertainer Johnny Carson, even though it was not the full name or picture of Johnny Carson that was used. Masking a character, such as changing a few letters, cannot exonerate a defendant. Nicknames are also protectable if they are understood to identify with the plaintiff. See *Hirsch v. S.C. Johnson & Sons, Inc. 280 N.W.2d 129 (Wis. 1979),* the crux of the matter was that the phrase 'crazy legs' was initially used or coined by a football star 'Elroy' but, another person adopted the exact phrase to advertise a shaving gel and that was held as an infringement of the right of the Plaintiff. See also, *Ali v. Playgirl, Inc. 447 F. Supp. 723 (S.D.N.Y. 1978),* where the phrase 'The Greatest' initially identified with Muhammad Ali the boxer was adopted by a cartoonish drawing of a black man. This was held as an infringement of Muhammad Ali's right of publicity.

4. **False advertising:**

This occurs when a business owner makes deceptive representations of the goods they sell to their target market. Inaccurate advertisements are actionable as clearly unfair competition. Even when an advert is unclear, it may be a ground for

an action, so far the advert can give the wrong impression about or trick consumers. The following are some practical examples of false advertisements;

a. Failing to mention that listed rates do not include any extra fees
b. Withdrawal of accurate information about a pregnancy test kit by saying that the results would be out in 10 minutes, whereas it is likely to take 30 minutes for the negative result to show up.
c. To assert that specific motor oil has a longer life and provides outstanding engine fortification than a rival's manufactured goods when is false.
d. A claim that fruit juices were pure pasteurized juices while the liquid was heated or frozen before its packaging
e. Covering up the original product label and claiming it was made somewhere else. For example, "Italian Leather" or "Made in Taiwan."

5. **Product disparagement:**

This occurs where false representations are made concerning the character of another person's goods or services. Where untrue statements are intentionally made regarding another company or its goods and such statements can endanger or be detrimental to the company, it is actionable under the principle of commercial criticism or disparagements. This statement may be written or oral, and they must have the ability to communicate commercial disparagement of the plaintiffs' goods or services. Mere puffs do not qualify as product disparagement, and neither does the same expression of a negative opinion of a product.

6. **Dilution:**

This is an infringement of intellectual property rights. Someone else's renowned mark is used in a extremely possible way to muddy its unique nature or tarnish it by hurting its reputation**.** It is the use of a famous spot in a way that blurs or tarnishes the spot. It reduces a renowned symbols' capability to recognize and distinguish goods or services, in spite of whether it is present or not;

i. Competition between the owner of a well-known trademark and others, or
ii. Likelihood of confusion, mistake, or deception (Stim, 2021)

In *Moseley v. V Secret Catalogue, Inc. 537 U.S. 418 (2003),* The Supreme Court ruled that the possessor of a renowned mark must prove actual dilution, not the probability of dilution, to win in a dilution suit. Therefore, dilution can only be established by evidence of substantial harm to the renowned mark.

7. **Infringement of trade dress:**

Trade dress is simply defined as adopting the general concept of another business owner's unique wrapping or product image with the end game of confusing consumers. In deciding on whether or not a likelihood of confusion is likely to occur, the court will look at;

- The vigor or uniqueness of the trade dress
- The intent of the Defendant to imitate and profit off plaintiff's character and benevolence
- Products' resemblance
- Proof of definite bewilderment

- Level of being concerned practiced by the buyers
- The area, manner, and quantity of simultaneous use. See the case of *Moseley v. V Secret Catalogue, Inc. 537 U.S. 418 (2003).*

8. **Misappropriation of trade secrets**

Trade secret laws protect against the misuse of a trade secret. The Uniform Trade Secrets Act, [UTSA] (1979) Section 1(2) defines the term: 'Misappropriation' as:

(i) In the attainment of another's trade secret by someone who knows or has rationale to know that the trade secret was acquired inappropriately; or

(ii) The revelation or employ of another's trade secret without articulate or oblique permission by a person who;

(A) used improper means to acquire knowledge of the trade secret; or

(B) at the time of disclosure or use knew or had reason to know that his knowledge of the trade secret was;

(I) derived from or through a person who has utilized improper means to acquire it;

(II) acquired under the circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(C) knew or had cause to see that it was a trade secret and that knowledge of it had been gained by accident or error before a meaningful change of position.[7]

A blogger got sensitive information and images from current and former Ford workers in *Ford Motor Company v. Lane, 67 F. Supp. 2d 745 (E.D. Mich. 1999).* The blogger had infringed the Michigan Trade Secrets Act (1998) by releasing the papers and images because he had grounds to believe that the workers who supplied him the material had breached their responsibilities to Ford not to expose the information, according to the court.

Restraint to trade cannot be discussed independently without a hint into the meaning of trade secret. Trade secret *means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:*

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and

(ii) is the subject of reasonable efforts under the circumstances to maintain its secrecy. [8]

[7] Digital Media Law Project and respective authors '*Basics of a trade secret claim'* (September, 10 2021) <https://www.dmlp.org/legal-guide/basics-trade-secret-claim> accessed 6th July 2021

[8] The Uniform Trade Secrets Act, (1985) Section 1 (4)

The concept of protecting trade secrets can be seen as related to the intellectual property right of trademark and patent law. However, the scope of trade secrets goes much farther than that of patent law and brands. Unlike patent law, trade secret laws draw less from property principles and more from equitable principles surrounding classified relationships.[9] Even though equity gives security to trade secrets against disloyalty by any persons under a contract or in private relations with the possessors of the secret, no distinction between contracts as to trade secrets and contracts to any other private property, as far as restraint of trade is concerned.[10] The ways which the pandemic has affected and is creating openings for possible infringement of people's intellectual property rights will be examined in a latter session of this study.

Restraint to Trade

According to Lord Justice Diplock of the Supreme Court of Judicature in the case of *Petrofina (Great Britain) Ltd. v. Martin, [1966] Ch 146 at 180,* "the process by which a Covenantor enters into a contract with the Covenantee to restrict the Covenantee's liberty to operations of future business with the anyone is known as restriction of commerce contract. "A restraint to trade contract is an agreement which prohibits a person from carrying out a business or trade in part or as a whole". It is a contract whereby an employer makes an employee agrees not to engage in a similar occupation or divulge secrets that could cause damage to his business or become a competition against his former employer. It restricts the employee's ability and freedom in the future to carry out trade, business, profession or vocation with other persons who are not a party to the contract.

The rationale for the creation of restraint to trade is the necessity of protection of the intellectual property and trade secrets, which is one of the most valuable assets in today's business world as a result of the amount of time and resources which are put into the creation and protection of these rights. The common law concept of trade constraint was established in the *locus classicus* case of *Nordenfelt v Maxim Nordenfelt (1894) A.C 535* when the Court decided that all restraint of trade provisions are adverse to public policy hence unlawful *ab initio* unless particular circumstances justify them. In this case, a Swedish armaments creator vowed that "he would not build guns or ammunition anyplace in the globe, and would not compete with Maxim in any manner" after selling his company to an American gun manufacturer. According to the Court, such a restriction is justified only if it is reasonable. This indicates that the reasonability must be centred on the parties' and public's interests to afford adequate protection without any injury to them. This was the case until the Supreme Court's ruling in Herbert *Morris Limited v. Saxelby (1916) 1 A.C 688,* which established that a contract in restriction of commerce is enforceable in specific situations, which include:

a. Where such contracts are required to guard an employer's lawful competitive wellbeing;

[9] Rothsein, A. Mark, Charles B. Craver, Elinor P. Schroeder, Elaine W. Shoben, & Lea S. VanderVelde. (1994). Employment Law: Louisville, West group. pp Section 818, at 516

[10] Nims, D. Harry The Law of Unfair Competition and Trade-Marks 406 (1929)

b. Where the enforcement of such contracts was neither unduly onerous to the employee nor detrimental to the public interest; and

c. Where the time and geographic extent of the limitation are acceptable.

Nigerian courts likewise followed the common law principle. In *Andreas I Koumoulis v. Leventis Motors Ltd, (1973) 11 S.C.* The Supreme Court said that all restrictions of trade covenants are prima facie unenforceable and that they are only enforceable if they are only enforceable. They are reasonable in light of the parties and the public's interests. It said that it is trite that any restraint agreement or clause that appears unreasonably wider than necessary undermining whether the employees have agreed or consented to it or its objective to protect the business interest would be void once examined by the Court to be unreasonable. In this case, the court was convinced that "the covenant which is the subject of the complaint was reasonably required for the preservation of the respondent's business interest and, consequently, deemed lawful and enforceable in law".[11]

In general, restraint to trade entails numerous collections of actions that includes;

a. To create a monopoly of a trade
b. To pressurize a person from carrying on a business or trade
c. To compel someone to fine-tune their trade to the extent that it will differ entirely from that of the rival so that it no longer appears competitive
d. To fix prices capable of chasing other businesses or rivals out of business.
e. To use non-compete clauses or other contractual provisions to hinder other business owners from carrying on that particular business
f. Unconstructively causing pain to hinder traders from operating their businesses freely
g. To interfere with a commerce agreement or contract, etc.

Determination of the Reasonability of a Restraint to Trade Clause

Rabie CJ, in the case of *Magna Alloys and Research (SA) (Pty) Ltd v Ellis, 1984 (4) SALJ 874 (A),* it is trite that nobody can implement agreements detrimental to the public good. Thus, an agreement restricting a person's freedom of trade is against the public interest and therefore, unenforceable if the circumstances of the instant case could make the Court think that the enforcement of such agreement would detriment the public interest. To determine whether or not restrain to trade is reasonable, the Supreme Court set out a test of four questions in the South African case of *Basson v Chilwan and Others, 1993 (3) SA 742 (A):*

a. Does one of the parties possess an interest that is worth being secured after the extinction of the agreement?

[11] Bridgeforte Attorneys *'Has restraint of trade become enforceable in Nigeria? – An examination of the legal regime under the Federal Competition and Consumer Protection Act'*<https://bridgeforteattorneys.com/wp-content/uploads/2020/12/BFA-Article-Has Restraint-of-Trade-Become-Enforceable-in-Nigeria-003-2.pdf> accessed 6th July 2021

b. If so, is that interest in danger by the other party?
c. In that case, does such interest evaluate qualitatively and quantitatively against the other party's claim not to be cost-effectively motionless and infertile?
d. Is there a part of public policy that has nothing to do with the association connecting the parties that necessitates the restraint's maintenance or rejection?

The following are instances where the court refused to enforce a restraint to trade clauses because they were too unreasonable or too broad;

a. A ban on hiring was imposed throughout the entire plastics business. According to the Supreme Court, it should have been restricted to the specific sections of the plastics industry where the prior employer worked.
b. A constraint prohibited an employee from engaging with a group of clients, but not all of whom had enough interaction with the employee to be at risk of being seduced away.
c. A constraint that prohibited an employee from working with a list of rivals was only effective in the case of enterprises that competed directly with the employer.
d. An employee might be fired with only one month's notice in the first six months but would be barred from working for the next two years.
e. Where the time it took a reasonably competent replacement employee to create a relationship with the employer's customers was longer than when it took a sufficiently qualified replacement employee to establish a rapport with the customers.

Implications of COVID 19 on Intellectual Property Rights: Restraint to Trade and Trade Secret

To properly enunciate the effect of Covid-19 on intellectual property rights, the authors would examine the South African case of *Oomph Out of Home Media (Pty) Ltd v Brien and another [2021] JOL 49492*

The Facts

Mr. Brien was a former employee and director of Oomph Out of Home Media (Pty) Ltd (the Company), and when he left, he remained a stakeholder. Mr Brien entered a restraint of trade and shareholders' agreements which included a condition all through his employment. When his employment was terminated, Mr Brien was owed to the company's sum of ZAR 1.2 million (USD 75,780) in pay. Mr. Brien resigned from the Company and went to work for a rival. Mr Brien consented to be restricted for 18 months from the date of termination of his employment from, among other things, working for a competitor of the Company under the agreement of restraint to trade entered by the Mr Brien and the Company. Due to the restriction, Mr Brien was prohibited from working for a rival in (29) twenty-nine African nations.

In two of those nations, the opposition was active. Mr Brien was also barred from sharing the Company's proprietary information and trade secrets to a rival under the shareholder's agreement. In March 2020, the Company learned of Mr Brien's

employment with an opponent. However, the urgent filed proceedings were struck out by the High Court's Gauteng division in May 2020. Due to a lack of urgency, the matter was struck from the roll. Mr Brien had been in the employ of a rival for about (3) three months at that moment. South Africa was on a lockdown at the time, and many enterprises were incapable of operations due to Alert levels 4 and 5. The Court struck the matter off the roll and reheard it on July 28, 2020, and judgment was delivered on February 3, 2021.

The Judgment

> Mr Brien had contacted the Company's clients and business acquaintances, and the court concluded that he had obtained secret and proprietary information from them. Mr. Brien did not dispute his actions and stated that he worked for a rival. The court focused on the current situation when the constraint was enforced while determining whether the restraint was reasonable. The court deemed it essential because the Company owed Mr Brien more than ZAR 1.2 million ($75 780 USD) at executing the restriction, a condition that must have existed for some time. According to the court, a solid professional relationship would be unlikely to survive in such a circumstance. As a result of the Company's behavior, Mr Brien's departure looked to be the most plausible choice accessible to him. The court could not ignore the sudden invasion of the Covid-19 epidemic in South Africa and worldwide when examining the circumstances at the time of enforcement.

According to the Company, Mr Brien might stay economically engaged in the economy by working in another profession in which he possessed credentials, such as communications. Mr Brien had not been in the employment of another sector for (9) nine years and had followed a career in advertising and marketing. Thus the court dismissed this argument as ludicrous and irrational. Mr Brien was forced out of his chosen profession and forced to work in a different field when many businesses were closing down, retrenchments and layoffs were common, and people were doing everything they could to survive and cope This was irrational and contrary to public policy and all values. The court refused to implement the restraint.[12]

The judgment, in this case, should not be seen to indicate that the pandemic establishes a block on the execution of restraint of trade clauses in the nearest future as the world economy slowly recovers. Still, its effect on particular industries must be considered when looking into whether or not a restraint is reasonable and other relevant factors. The above case is a very recent case whereby the court refused to grant the enforcement of a condition to trade clause, and one of the decisive factors considered by the court was Covid-19. The court deemed the restraint of trade unreasonable because the country was

[12] Cogger, Melissa '*South Africa: Enforcing restraints of trade during the covid 19*' (March 1, 2021) *pandemic'* < https://www.bowmans.com/insights/employment/south-africa-enforcing-restraints-of-trade-during-the-covid-19-pandemic/> accessed 6th July 2021

> on lockdown, and he needed to make a living. The court considered the fact that the lockdown limited his access to job opportunities outside his field.
>
> As earlier stated, a court would not enforce a restraint of trade agreement where it is unreasonable. The pandemic altered economic circumstances in a manner that could create grounds for the challenging of non-compete clauses and conditions to trade. Former employees may argue that the enforcement of such clauses would cause forced unemployment and would lead to undue hardship during these trying times. Employees may also push the agreement that covenants against competition should not be granted at such a period of economic disaster because, contrary to public policy, they discourage hiring and increase inefficiency. The employee's interest in earning a living is in support of the public's interest in promoting economic mobility. Therefore, artificial restraints which limit an employers' ability to fill openings with appropriately skilled candidates will create unnecessary drag on economic recovery.[13]

Because of the peculiar circumstances the world is going through, and the world has had to shut down. Businesses owners had to look for alternatives to get their work done without disobeying government directives and reducing the transmission of the disease. Businesses immediately switched to a digital mode of operation when they were no longer allowed to meet in person. Remote working became the new norm, as everyone worked from the comfort of their homes. The legal safeguard of business secrets depends on whether or not a business has taken sufficient procedures to secure the confidential information. Due to the epidemic outbreak that led to remote working, employees may take advantage of being subjected to less supervision and use this opportunity to access trade secrets for their gain if business enterprises have failed to take steps to limit and monitor access to confidential information.

Employees who transitioned to working from home are most likely to use their devices and Wi-Fi networks. Employees' devices and home networks may lack proper passwords, virus, and security protections. They may be disclosed with family members and housemates, which increases the risk for remotely accessed trade secrets. Also, the systems used to allow employees to work from home are most likely to be extended and a lot more difficult during the pandemic due to increased and unanticipated demand for goods and services. This unusual pressure may make ordinarily diligent employees engage in riskier works to get job done, including using personal emails, messaging or cloud platforms, downloading trade secrets to personal computers, cell phones or clouds, and printing trade secrets.

If corporations are caught off guard by the additional dangers spawned by the Covid-19 situation, it might lose considerable value spent in personal trade

[13] Daniel, Zinman, James, Walker and Jacob, Taber. (2020). Enforceability of Non-Compete Provisions During COVID-19 Pandemic. *New York Law Journal,* 263(113), *(June 12, 2020)'* <https://www.perkinscoie.com/images/content/2/4/241818/Zinman-The-Enforceability-of-Non-Competes-During-the-Pandemic.pdf> accessed 6th July 2021

development. For example, a jury awarded Motorola Solutions $764 million in 2020 for stealing trade secrets related to mobile radios from Hytera Communications.[14] In 2018, a jury awarded House Canary over $700 million for theft of trade secrets about its real estate appraisal technology, while ASML, a Dutch business, was awarded $223 million for theft of trade secrets against a US competitor.[15] Many technological start-ups and organizations working in fields like artificial intelligence use trade secrets rather than patents to safeguard their most important inventions. The value of those innovations is enormous.

Conclusion and Recommendations

This study considers how the Covid-19 pandemic has affected and is creating openings for possible infringement of people's intellectual property rights as it relates to Restraint to trade and unfair competition in business or trade. This critical pandemic will likely exploit business owners' intellectual property rights and perpetuate unfair competition practices, consequently making restraint to trade clauses difficult or challenging to enforce. As employers and businesses are beginning to consider new methods which can be used to protect confidential information, corporate leadership should ensure that they appropriately seek legal counsel. Intellectual property attorneys can help business companies identify proprietary information, recommend the best protective practices, and construct appropriate policies to safeguard and shield the company's trade secrets from being exposed.[16] To ensure that these rights are not left vulnerable to theft and cybercrime, all employers are encouraged to put at their forefront the protection of their trade secrets from those who should not have access to them. When these gaps have been addressed, there would be a safer work environment for trade secrets and confidential information within and outside the office grounds, leading to fewer trade secrets and restraint to trade litigations.

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[14] Kirkland & Ellis, 'Motors Wins **$**764 Million in Radio Trade Secret Trial'. [In the News-Law360] (14 February, 2020) <https://www.kirkland.com/news/in-the-news/2020/02/motorola-wins-764m-in-radio-trade-secret-trial> accessed 8 December 2021

[15] Foley, Michael 'Texas Court Overturns Record $706 Million Verdict. (29 October, 2020) https://www.tradesecretsinsider.com/texas-court-overturns-record-706-million-verdict/ accessed 8 December 2021

[16] Caloiaro, Steven A., Green, Caleb L. *'maintaining trade secrets amid the Covid 19 Pandemic'* (April, 2020) <https://www.dickinson-wright.com/news-alerts/maintaining-trade-secrets-amid-covid19-pandemic> accessed 21 July 2021