

**Willy Wonka’s Everlasting Gobstopper as a Never-ending Trade Secret:
The Importance of Cultivating an Effective Trade Secret Protection Program
By Meeting a Client’s Specific Needs**

Introduction

The trade secret owner’s obligation to take reasonable measures under the circumstances to protect trade secret information is a crucial element of trade secret law.¹ Because the law is limited in its remedies² and is at times inconsistent,³ the threat of potential legal action is often not enough of a theft deterrent,⁴ and litigation is costly and time-consuming,⁵ care needs to be taken to ensure that the trade secret protection program designed for a client actually works when implemented.⁶ Therefore, when evaluating a client’s business operations in the context of protecting its valuable trade secrets, it is important to keep in mind that a trade secret protection program is more than a boilerplate application of reasonable security precautions. A trade secret protection program must be specifically customized to the individual business and security needs of each client, since what is appropriate for one client may not be for another.⁷ Furthermore, although referring to case law is useful for understanding what a court would find a “reasonable” security measure, if such measures cannot realistically, much less beneficially, be applied to a client’s particular situation, it likely will not adequately protect the client’s trade secrets.⁸

If Roald Dahl’s character Willy Wonka were a client, Wonka’s imaginative inventions and zany methods of manufacturing dreamed up by the author in Charlie and the Chocolate Factory⁹ would be the epitome of unique trade secrets. The eccentric, over-the-top precautions that Wonka takes to protect his trade secrets while trying to remain “the most *amazing*, the most *fantastic*, the most *extraordinary* chocolate maker the world has ever seen”¹⁰ arguably go beyond what is considered “reasonable.”¹¹ A detailed examination of Wonka’s fanciful workplace, confections and inventions, an evaluation of his fantastical trade secret issues and his

outlandish trade secret protection program, as well as recommendations for possible improvements, all illustrate how unique and challenging a client's trade secret issues may be.

Why a Well-Designed Trade Secret Protection Program Is Necessary

A trade secret protection program serves two important purposes: to guard the owner's valuable trade secrets from public dissemination because doing so maintains the owner's competitive advantage in the workplace,¹² and to "invent evidence"¹³ in the event of misappropriation.¹⁴

The Uniform Trade Secret Act defines a "trade secret" as:

"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 efforts that are reasonable under the circumstances to maintain its secrecy.*¹⁵

Massachusetts General Laws codified trade secret law¹⁶ and defines a "trade secret" as:

"anything tangible or intangible or electronically kept or stored, which constitutes, represents, evidences or records a secret scientific, technical, merchandising, production or management information, design, process, procedure, formula, invention or improvement."¹⁷ By definition, then, proving the existence of a trade secret hinges on the necessary element of *the owner taking reasonable precautions under the circumstances to protect it.*¹⁸ The burden of establishing that the information stolen falls under the definition of "trade secret" is on the owner.¹⁹ One of the elements of bringing an action for trade secret misappropriation²⁰ is being able to show that *reasonable* precautions were taken to guard an entity's trade secrets.²¹ During litigation, once a court finds that the standard is met,²² and that those trade secrets were misappropriated, trade

secret laws can provide some recourse to the damaged party, typically in the form of injunctive relief and monetary damages.²³ Courts see a trade secret protection plan as strong evidence that reasonable measures were taken to protect the secret,²⁴ so it is important that the client has assistance in creating and maintaining a viable, effective trade secret protection plan.²⁵

While it is reassuring that a cause of action may be brought to allay losses caused by the misappropriation of trade secrets, because of the many drawbacks of bringing an action for trade secret misappropriation, it is important to carefully devise a trade secret protection program that will best prevent a breach in the first place.²⁶ Though legal remedies are available, they are limited and present many hurdles to overcome as well. For example, reverse engineering by one party of intellectual property that may be guarded as a trade secret by another party (and likely competitor in the industry) is lawful.²⁷ Also, independent development by one party of something that is already guarded as a trade secret by another party is also proper use.²⁸ One major drawback to pursuing a trade secret cause of action is that litigation is notoriously expensive and time consuming.²⁹ In fact, depending on the relative value of the trade secret, it may even cost more than the value of the trade secret itself to pursue an action for misappropriation than the loss *caused* by the misappropriation.³⁰ Additionally, the argument has been made that “civil remedies fail to act as deterrents since advances in information technology and the dissemination of stolen information ... And because competitors have the defenses of independent development, reverse engineering and lack of secrecy.”³¹ The lack of uniformity of trade secret law that exists across jurisdictions, given the tension between the Uniform Trade Secrets Act and continuing reinterpretation through common law, can be considered yet another drawback.³²

Thus, although one objective of an effective trade secret protection program is to meet the legal standard and prove that reasonable measures were taken to protect a business' trade secrets,³³ the primary objective of a trade secret protection program should be to protect the client's trade secrets from misappropriation in the first place, and avoid the need for litigation.³⁴

Points to Consider When Drafting a Client's Trade Secret Protection Program

When creating a trade secret protection program, it is not only important to determine whether a court would find the planned efforts to maintain secrecy were reasonable, but also that the program's protocol is effectively followed in practice and that the intention to adhere to it exists.³⁵

A trade secret protection program consists of a custom combination of several factors to consider, including the specific types of trade secrets it is being designed to protect, the client's methods of operations, its employee structure, its third party relationships, and industry practices.³⁶ It is important to take into consideration the amount of secret information the client risks disclosing in marketing and advertising, what security measures are being taken at the client's physical place of business (and, if applicable, virtual, internet business locations), what agreements are in place with the client's employees, and how to control the information disclosed to third parties during the course of business relationships with them.³⁷ Companies might have similar operational and employee issues, and several means of security precautions are generally followed because they are considered effective and reasonable under the standard.³⁸ But, when viewed as a whole, each corporate client's situation has unique needs, so it is important to keep in mind that an effective trade secret protection program needs to be custom-tailored to take into account and to complement all of these factors.³⁹

Willy Wonka as a Client: The Background on his Chocolate Factory

In Charlie and the Chocolate Factory, Willy Wonka is a world-renowned, very eccentric, innovative candy maker and inventor. He is described as “a magician with chocolate” who “can make *anything*”.⁴⁰

His fortress-like factory is surrounded by high walls with huge iron gates and is considered the “largest and most famous [factory] in the whole world, about fifty times as big as any other.”⁴¹ Wonka carries around a very low-tech ring of keys to access locked areas within the factory.⁴² Some areas of the factory are only accessible by a boat that travels through the factory along a river of chocolate.⁴³ Two great glass elevators access any room in the factory and open directly into at least some of the rooms.⁴⁴

Charlie Bucket’s grandfather, who worked in Wonka’s factory twenty years earlier, remembers it fondly and clearly has the utmost respect for Wonka.⁴⁵ According to Grandpa Joe, who insists to Charlie that these stories are all true, Wonka has invented “more than two hundred new kinds of candy bars, each with a different center, each far sweeter and creamier and more delicious than anything the other chocolate factories can make!”⁴⁶ Wonka is credited with inventing a way of making chocolate ice cream so that it stays cold for hours without being refrigerated, and can be left lying in the sun without melting.⁴⁷ Wonka can make marshmallows that taste of violets, rich caramels that change color every ten seconds, chewing gum that never loses its taste, and candy balloons that can be blown up to enormous sizes and then popped with a pin and gobbled up.⁴⁸ Using “a most secret method,” he can make lovely blue birds’ eggs with black spots on them, which melt into a little pink sugary bird on one’s tongue.⁴⁹

A few years ago, Wonka was a victim of a security breach when his trade secrets were stolen after hired spies infiltrated the factory.⁵⁰ All the other chocolate makers, jealous of the wonderful candies that Mr. Wonka was making, sent in spies to steal his secret recipes.⁵¹ The spies posed as workers in Wonka's factory, learned exactly how certain candies were made and reported this secret information to Wonka's competitors (likely in exchange for a great deal of money).⁵² Soon thereafter, Wonka's once inimitable confections were being replicated by his competitors. Fickelgruber's factory started making an ice cream that would never melt, even in the hottest sun.⁵³ Then Prodnose's factory came out with a chewing gum that never lost its flavor, Slugworth's factory began to produce candy balloons that can be blown up to enormous sizes then popped with a pin and gobbled up, and other secret creations were copied as well.⁵⁴

Upon realizing that the secrets behind his original candy creations were in the hands of competitors, Wonka feared that he had lost his competitive edge in the candy industry and that his business would be ruined as a result. Wonka decided to take dramatic security measures and completely closed down the factory before any more thefts took place, asking all of the thousands of people working there to leave and never come back.⁵⁵

Before reopening the factory ten years ago, Wonka discovered the Oompa-Loompas while on a trip abroad to discover new ingredients.⁵⁶ The Oompa-Loompas are a peculiar clan rescued by Wonka from a dangerous African jungle referred to as Loompaland and "smuggled" into the country.⁵⁷ They became employees of Wonka's, and have a deal with him that they work and reside in the factory in exchange for unlimited cacao beans.⁵⁸ They are never exposed to the outside world, because they would perish outside of the factory's controlled climate, and they have a special cacao bean diet.⁵⁹

The factory is up and running again, and it has been manufacturing chocolates and candies that are increasingly fantastic and delicious, but it remains completely locked up. No spies have been able to get in, and so far, neither Fickelgruber, nor Prodnose, nor Slugworth nor anyone else has been able to reverse-engineer any of these creations.⁶⁰ Nobody is ever seen going into or coming out of the factory, and all outgoing shipments come out of the factory through a special trap door.⁶¹

Analysis of Wonka's Current Trade Secret Protection Program

The value of Wonka's products is apparent not only from the prior trade secret theft Wonka suffered, but also from the sensational worldwide coup caused by his Golden Ticket contest.⁶² The candy bars containing one of the five coveted golden tickets were so sought-after, that one woman's husband was kidnapped and her case of Wonka bars was demanded as ransom.⁶³ Even more surprising was that she gave serious consideration to surrendering her chocolate bars to the kidnappers in exchange for her husband's life.⁶⁴ The steps Wonka took after the recipe theft to protect further misappropriation—including firing thousands of employees, completely shutting down operations and locking down the factory--were so extreme that they surpass what would be considered reasonable precautions.⁶⁵ His reasoning was simply that if no one is able to gain access to the factory, no one could learn how his candy is made and disclose this information to competitors.⁶⁶ Thus, Wonka's recipes and methods of manufacture, including his factory machines, have remained secret as he has regained his competitive advantage in the marketplace.⁶⁷

The Trade Secrets

Wonka's trade secrets⁶⁸ include the reasonably guarded, valuable secret recipes, methods, and processes for all the creations not publicly known that give Wonka his competitive edge in the marketplace.⁶⁹ Inventions such as the marshmallows that taste of violets, the rich caramels that change color every ten seconds as you suck them, the blue birds' eggs made by a "most secret method"⁷⁰ are all potentially trade secrets if they meet the standard.⁷¹ Another potential trade secret is the process of mixing the chocolate by waterfall. The waterfall makes lighter, frothier chocolate, and Wonka's is the only factory in the world that uses this waterfall-mixing technology.⁷² Yet another process that could be considered a trade secret is Wonka's use of trained squirrels to shell walnuts, a process that gets more of the meat out of the walnuts.⁷³

Any market share plans, blueprints for his inventions, drawings, and descriptions could also be considered trade secrets.⁷⁴ His index cards containing advertising copy for his chocolates and candies may inadvertently disclose trade secrets as well.⁷⁵

However, factory processes and devices, such as Wonka's fairly standard assembly lines, which use commonplace conveyor belts for mass production and to transport candy,⁷⁶ could not be considered one of his trade secrets because this sort of technology is commonly known and widely used throughout the candy business, and, for that matter, across several industries.⁷⁷

Oompa-Loompas as Employees

Wonka's relationship with the Oompa-Loompas is one of mutual respect, loyalty, and an obvious high level of trust. It is suggested that individual Oompa-Loompas work only in areas of the factory where they have authorized access; and are not permitted free reign over the entire factory.⁷⁸ Under the UTSA, "an employee's knowledge of trade secret information does not lose

trade secret status if revealed to employees so long as the third statutory requirement in the definition of "trade secret" is satisfied: the information must be subject to reasonable efforts to maintain its secrecy."⁷⁹ Also, common law generally recognizes the need for employees to have knowledge of information that may be a trade secret in order to carry out their duties.⁸⁰ Since they never go outside, any mischief they get into is confined to the factory, and it is suggested that Wonka has the Oompa-Loompas under control.⁸¹ Therefore, it may be assumed that no serious issues of trade secret misappropriation by the Oompa-Loompas exist to date.⁸²

The Tour

Prior to the contest winners' Golden Ticket factory tour, a man identifying himself as Arthur Slugworth, President of Slugworth Chocolates, Inc., approached each of the children and proposed a deal: if they would get a hold of an Everlasting Gobstopper while inside the factory and bring it to him after their visit, he would make it worth their while.⁸³ The Everlasting Gobstopper, Wonka's latest amazing creation was sure to be a hit, and, as the man explained, would be a fatal blow to competitor Slugworth's business. It is valuable because it is designed to be incredibly long lasting, so it is anticipated to be wildly popular among children with little pocket money.⁸⁴ As it turned out, "Slugworth" was a mole hired by Wonka himself, designed to test the children's honesty. The hired actor illustrates the very real threat to the factory's secrets that the tour posed.⁸⁵

The Golden Tickets, though limiting factory admission to five children and their guardians, permit the bearer to see all of Wonka's secrets and the magic of his factory.⁸⁶

Wonka required the children to sign a contract as a condition of admission to factory, in addition to presentment of a golden ticket.⁸⁷ The purpose of the contract seemed merely to

indemnify Wonka against any actions brought for injuries while touring his premises.⁸⁸ Another term included in the contract stated that if they were caught stealing, the children would forfeit the lifetime supply of chocolate that came with being a Golden Ticket holder.⁸⁹ If it did not do so, this document should have included confidentiality language as well, since the children were being allowed to see *all* the magic and *all* the secrets of the chocolate factory, and since Wonka, as will be discussed, perhaps inadvertently disclosed secret information.⁹⁰ Though Wonka would escort the group during the tour, this unlimited access still greatly compromised Wonka's trade secrets. For example, the fact that Wonka's is the only factory in the world that mixes chocolate by waterfall suggests that this may be a secret method, and the fact that it produces a *superior*, light and frothy product, indicating the commercial advantage and value of the process, was also disclosed to group.⁹¹

Some physical security measures have been taken within the factory. The first door entered during the tour had a key code where Rachmaninoff had to be played to open the door. Another door required a combination consisting of a sequence of numbers, including fractions.⁹²

There are various access deterrents throughout the factory as well. Posted boldly and clearly on one door was the warning "MOST PRIVATE – KEEP OUT."⁹³

The Inventing Room was identified by Wonka as the heart of the factory.⁹⁴ The sign on the Inventing Room reads "DANGER – KEEP OUT" followed by, "NOTICE! ONLY AUTHORIZED OOMPA-LOOMPAS ADMITTED!!"⁹⁵ Wonka has a key for this heavy metal door with bars on the windows.⁹⁶ During the factory tour, he sternly warned the group not to touch or taste anything:⁹⁷ "All of my most secret inventions are cooking and simmering in here. Old Slugworth would give his false teeth to get inside for just five minutes. So DON'T TOUCH A THING."⁹⁸ However, Mike Teevee, one of the children, was able to grab and chew Exploding

Candy For Your Enemies.⁹⁹ More trade secrets were shared by Wonka in this room, including how he adds a pair of running sneakers to a simmering pot to give it a little “kick,” and stirs a blanket into another pot because it is too cold.¹⁰⁰

The machine inside the Inventing Room that makes the Everlasting Gobstoppers was covered with a tarp with large letters on one side spelling “KEEP OUT.”¹⁰¹ Wonka explained how this candy revolutionizes the industry, again possibly sharing too much information with the group by explaining the yet-to-be-released product and disclosing its value.¹⁰² Wonka further risked the secrecy of the Everlasting Gobstopper by handing out one sample to each child.¹⁰³ Though he made the children solemnly swear that they keep the Everlasting Gobstoppers for themselves and never show them to another living soul for as long as they shall live, Veruca Salt agreed while crossing her fingers behind her back.¹⁰⁴ Even utterly moral Charlie Bucket, who now stands to inherit the entire factory, momentarily considered breaking his promise and selling the Gobstopper to the hired “Slugworth,” motivated by the fact that his family was very poor and on the brink of starvation.¹⁰⁵ Lastly, the secret squirrel shelling process may also have been compromised during the factory tour, since although the area was gated, the entire process was in the tour participants’ full view.¹⁰⁶

Conclusion: Recommendations

Identifying Trade Secrets

It may be assumed that Wonka chose to protect his recipes, methods and inventions as trade secrets rather than apply for patents for his methods and machines, or copyright his recipes.¹⁰⁷ Some of these assets may be more valuable if kept secret, for example, because they will endure longer than the duration of a patent.¹⁰⁸ Some of Willy’s innovations may not be

patentable, either because they do not fall under patentable subject matter (unique ingredients for example: naturally occurring plants are not patentable, though he could arguably patent hybrids he created), or because they have not yet been reduced to practice.¹⁰⁹

Must Take Reasonable Steps to Protect Trade Secrets

As previously discussed, although reasonable efforts must be made to keep secrets out of the public domain, absolute secrecy in guarding trade secrets is not required.¹¹⁰ To maintain a trade secret, the proprietor must exercise a certain level of vigilance. Numerous cases have attempted to define the requisite level of secrecy.¹¹¹ The standard that must be demonstrated is the preservation of a *substantial* element of secrecy.¹¹² Substantial secrecy "means so much that except by the use of improper means, there would be difficulty in acquiring the information."¹¹³ It is this standard that should be kept in mind while designing a trade secret protection program around Wonka's trade secrets, factory, employees, and day-to-day business dealings.¹¹⁴

Marketing Materials and Inadvertent Disclosure of Protected Information

During the childrens' tour of the chocolate factory, Wonka's enthusiasm may have caused him to disclose too much information about some of his secret ingredients and processes.¹¹⁵ As previously noted, he showed his guests the chocolate waterfall, how he adds sneakers to a mixture to give it "more kick," and a blanket to another mixture in order to warm it up.¹¹⁶ It would be advisable prior to discussing the factory operations to review his trade secrets, establish and prepare in advance an appropriate amount of information to reveal in order to pique commercial interest and market Wonka's creations, without losing his trade secrets by sending them out into the public domain.¹¹⁷

Factory Security

Wonka has invited Charlie's entire family to move into the factory to live.¹¹⁸ He emphasizes that factory access is the main security problem, so his solution is to keep the factory sealed off from public access, with his in-house Oompa-Loompas, and now the Bucket family, working and residing inside the factory.¹¹⁹ His physical security measures are considerably dated given the advancement of modern technology. Even more simply, however, locks can still be picked, gates can still be dismantled, and walls can still be scaled. Common law has held that gates, locks and walls are reasonable trade secret protection measures; that they suffice in terms of meeting the reasonable measures standard for a trade secret misappropriation action.¹²⁰ However, if the primary goal of a trade secret protection program is to prevent misappropriation in the first place, it may be advisable to consider enhancing the chocolate factory's security system with more sophisticated, impenetrable theft deterrents such as elaborate electronic key codes at the truck loading bays.¹²¹ Furthermore, were Wonka to once again employ local workers, another modern security device he could consider implementing is an employee security badge, which would allow select employees entrance to restricted areas.¹²² Another suggestion that might appeal to Wonka's love of gadgets would be the implementation of voice recognition access, which would eliminate the need for keys, badges or other physical passes that could be misplaced or stolen.¹²³ Yet another suggestion would be to secretly code ingredients.¹²⁴

Employees

Because of the prevalent problems of industrial espionage¹²⁵ and corporate raiding¹²⁶ -- where a competitor "poaches" one or more employees for the purpose of utilizing their current

employer's trade secrets--an extremely important part of a trade secret protection program is a thorough and specific set of procedures addressing employee confidentiality.¹²⁷ Once trade secrets are identified and rules concerning physical factory access are in place, the employees should be put on notice that the trade secrets exist, that procedures have been put in place to protect their secrecy, and that the employees have the duty to keep them confidential.¹²⁸ One of the simplest ways to allay the risk of employee disclosure of protected information is to restrict employee access to trade secrets wherever possible. Because some employees need access to trade secrets in order to perform their jobs, limiting exposure on a need-to-know basis can still curb overall trade secret access.¹²⁹

When appropriate, an employment agreement is often an effective means of deterring employee disclosure of trade secrets, and, if necessary, to later establish strong evidence in a cause of action that the requisite reasonable precautions were taken to guard trade secrets.¹³⁰ In addition to containing an employee's terms of employment, an employment agreement can contain clauses documenting notification to the employee of the importance of guarding the company's identified trade secrets, informing the employee of his duty to keep the trade secret from becoming public knowledge, and also delineating disciplinary procedures and employee liability in the event of a breach.¹³¹ A non-disclosure agreement between an employer and an employee prohibiting the employee from disclosing trade secrets both during employment and after termination of employment, can stand alone as a separate document or be a part of the employment agreement.¹³² Another example is a non-compete agreement, where an employee agrees not to work for a competitor, or become competition *himself*, for a certain amount of time following termination of employment. Depending on the nature of the trade secret in its

respective industry, including how long it can reasonably be kept secret, such an agreement can be useful, but is prohibited from being limitless in duration or geographical area.¹³³

Considering the unusual employee arrangement in the chocolate factory, employment agreements for the Oompa-Loompas probably would not be very advantageous in Wonka's trade secret protection plan. As the Oompa-Loompas were "smuggled" into the country from Loompaland,¹³⁴ Wonka probably would not wish to draw attention to their citizenship status by suing any of them in a court of law, since he could face legal sanctions himself. Also, the Oompa-Loompas work for room and board plus wages paid in chocolate.¹³⁵ Since it is likely that the Oompa-Loompas have no significant assets, there would be no reason to sue since they could not pay for any loss of profits to the company or other damages as a result of misappropriation.¹³⁶ Additionally, their very survival requires such a warm environment that they cannot set foot outside the factory and risk exposure to harsh elements in an unfamiliar geographical location. So the question of whether Wonka has legal recourse against any industrial espionage or corporate raiding¹³⁷ where the Oompa-Loompas are concerned is moot.

Furthermore, Wonka relies on them as trusted factory workers. Also, since the working relationship between Wonka and the Oompa-Loompas seems to be succeeding on the bases of loyalty and mutual respect, there seems little risk of industrial espionage. To maintain a pleasant and productive workplace, Wonka would want to avoid the possibility of offending them and "rocking the boat" with threats of negative consequences in the event of trade secret misappropriation.¹³⁸ Therefore, the execution of employment agreements is not advisable in this particular situation, and Wonka will have to rely on their code of honor and implied duties of loyalty.¹³⁹ Unlike written agreements, implied agreements typically are not treated as favorable support of measures to protect trade secrets,¹⁴⁰ so it might be helpful for Wonka to review the

Oompa-Loompas incentives to make sure they are kept happy and productive if he is concerned about disclosure of his trade secrets by them.¹⁴¹ If possible, it may be beneficial to enhance the accountability of the Chief of the Oompa-Loompas, and have him keep a close supervisory watch over his tribe in order to preemptively interrupt any questionable behavior. An easier alternative, while keeping up Oompa-Loompa morale, would be to simply limit their physical access like Wonka did with the Invention Room, which is designated for “authorized Oompa-Loompas only.”¹⁴²

Wonka has very simply dealt with the problem of employee mobility¹⁴³ by having live-in workers.

As with the Oompa-Loompas, Wonka has chosen to solve the problem of sharing the chocolate factory secrets with Charlie, who stands to take over the business when he is old enough, by having the entire Bucket clan agree to move in to the factory full-time.¹⁴⁴ Should they wish to come and go as they please both inside and outside the factory, some sort of confidentiality agreement could be suggested.¹⁴⁵ However, as with Wonka’s relationship with the Oompa-Loompas, avoiding insulting the Buckets might outweigh any need for them to sign confidentiality and non-compete agreements.¹⁴⁶ After all, they will not only “help out” in the factory, but will all live together there as well.¹⁴⁷ Furthermore, the Buckets now have a stake in the company’s future, and have an incentive to protect the trade secrets that contribute to its success, so the risk of trade secret disclosure is minimized.¹⁴⁸ Since there is a need to be sensitive to the client’s “office culture” and not upset working relationships with distrust, it could be emphasized to the Buckets that access should be restricted for safety reasons in addition to being a trade secret protection program security measure.¹⁴⁹ Also, it may be enough of a deterrent to inform the family of the need to keep the factory’s secrets safe, and perhaps even

formally document what information was provided to them, in order to establish a confidential relationship between Wonka and the Buckets without upsetting them with the threat of sanctions or negative consequences.¹⁵⁰

But, that does not mean that there will never be a need for such agreements to be implemented as part of Wonka's trade secret protection program, so the foregoing contract options and security procedures should be presented to Wonka and revisited later.¹⁵¹ As previously discussed, an oral agreement is not strong evidence of a reasonable measure to protect secrecy, so if a verbal agreement or code of conduct fails, a court might find that the secrecy requirement fails as well.¹⁵² There is, therefore, a strong argument for written confidentiality agreements as evidence of reasonable measures taken to protect secret information when establishing the existence of a trade secret.¹⁵³ For example, the fact that Charlie's dad works at a toothpaste factory might give rise to an issue of industrial espionage.¹⁵⁴ In the event that Mr. Bucket is induced by his employers to breach his confidential relationship with Wonka, and disclose to his employers the developments of Wonka's anti-cavity inventions, a court would look favorably upon a non-competition agreement as well as the stringent security measures Wonka implemented.¹⁵⁵

It has been shown that Wonka prefers to physically secure the factory by keeping it completely locked down,¹⁵⁶ and after the employees/spies stole his trade secrets (presumably Wonka did not have employee non-disclosure agreements in place) he probably will not be hiring.

However, if in the future Wonka decides to improve the local job situation for fellow Londoners and once again open the gates to local employees sometime in the future, the same planning considerations of physical security, employee duties, advertising limitations and

regulation of shared information with third parties discussed previously should be revisited.¹⁵⁷

The hiring of externally-dwelling employees who pose a threat of corporate raiding would require written employment agreements which, along with their terms of employment, expressly inform employees about their duties to protect identified trade secrets,¹⁵⁸ and perhaps even describing consequential legal and disciplinary actions.

Departing employees, particularly those entrusted with a significant amount of training, knowledge and responsibility, would need non-compete agreements in addition to nondisclosure agreements so that trade secrets are protected and not otherwise profited from after the employees discontinue employment.¹⁵⁹ As previously discussed, these agreements would need to find a reasonable balance between thoroughness and specificity without being overly oppressive or restrictive in terms or duration, or else risk being found by the court to be unenforceable.¹⁶⁰

Third Parties

Some corporate clients would benefit from drafting or modifying the contracts or agreements they have with distributors, vendors, shippers, and similar third parties with carefully written confidentiality clauses.¹⁶¹ Wonka, however, seems to have eschewed such third party business relationships, as evidenced by his completely self-sufficient factory, and by such practices as sending all his outgoing shipments outside the factory through a special trap door.¹⁶²

Wonka is not likely to be interested in addressing licensing to third parties at this time (or obtaining a license to use another entity's technology), since he is so hands-on with his candy production.¹⁶³ Also, there is always some risk inherent in outside expansion, which would be heightened for Wonka if his one-of-a-kind machines and processes were replicated outside of his

centralized factory operations or if he were required to disclose any secret recipes or other trade secrets in the course of becoming a licensee.¹⁶⁴ Wonka's inventions are much better protected not being voluntarily shared—a confidentiality agreement could still be violated and then it may be too late to keep Wonka's trade secrets secret through an injunction.¹⁶⁵ However, Wonka's situation could later change and the commercial and economic benefits of licensing could outweigh these risks.¹⁶⁶ For example, Wonka's candy production could no longer meet the global demand that he and the Oompa-Loompas currently seem to have under control without outside help.¹⁶⁷ By implementing license agreements, Wonka would be taking the requisite reasonable precautions to guard his trade secrets in the context of a third party relationship, and mitigating risk by shifting the burden of proof of misappropriation to the other party while strictly controlling the shared confidential information.¹⁶⁸

If, in the future, Willy is amenable to working with third party security specialists and could not or did not wish to design for himself a security system more elaborate than his quaint, giant key ring, a collaborative agreement with a security professional is an option to control the dissemination of any of Wonka's valuable trade secrets the security system contractors might stumble upon during the course of their work while at the factory.¹⁶⁹ Documenting their contractual arrangement would reasonably mitigate risk of trade secret misappropriation by expressly describing (and limiting) the work to be performed, the certain limitations to their factory access, and a confidentiality clause with respect to the trade secrets accessible by them during their relationship.¹⁷⁰

Wonka has probably trained the Oompa-Loompas to assist with repairs within the factory, so giving access to outside specialists and forming some sort of collaborative arrangement for factory repair work would probably not need to be considered at this time.¹⁷¹

If, at some point, the premises are required to be inspected, Wonka must take whatever reasonable steps he can to obtain an agreement limiting access.¹⁷² Physical access should be limited however possible, and any documents containing recipes, plans, blueprints and the like should be locked away or at least removed from plain view.¹⁷³

With respect to factory visitors, it is unclear that there were confidentiality agreements in place with the lucky Golden Ticket-holders, but there should have been. Asking the children to orally promise that they will not hand over samples would not be viewed as favorably by a court as a written non-disclosure agreement will.¹⁷⁴ Though Wonka did take the precaution of restricting factory admission to five children and their guardians, public factory tours, which are not an essential part of conducting business, are completely contrary to maintaining a substantial level of secrecy and greatly increase the potential for industrial espionage.¹⁷⁵ If the factory must be toured, any of Wonka's trade secrets can be learned during the course of a tour, so those areas should be off-limits during the tour. If that is not possible, nondisclosure agreements should definitely be executed prior to admission.¹⁷⁶ Wonka did attempt to conceal the Everlasting Gobstopper machine by covering it with a tarp for the childrens' tour, and his policy of completely banning factory access for the last decade has been successful, but a reasonable level of restricted access somewhere in-between should be effective in protecting Wonka's trade secrets while allowing him to work without being unduly burdened by stringent security measures.¹⁷⁷

Finally, after careful consideration of all of Willy Wonka's preferences and methods of doing business, and the drafting and implementation of a trade secret protection program, the plan should be periodically reevaluated. Reviewing the trade secret protection program's secrecy procedures is necessary to establish whether the program is being properly

implemented.¹⁷⁸ Furthermore, as it has been suggested, review is necessary because the client's business dealings and relationships may evolve and expand: the number of employees could change, locations could be added, and relationships with third parties could be created, all of which would necessitate adjustments to the security precautions already in place. Finally, periodic reassessment of a well-conceived trade secret protection program not only is essential to ensure that the client's needs are being met, but that the challenges of increasingly sophisticated technology and resulting rapid dissemination of information are being addressed,¹⁷⁹ in order to maintain the client's edge in commerce by keeping its corporate assets secret.¹⁸⁰

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¹ *J.T. Healey & Sons, Inc. v. James A. Murphy & Sons, Inc.*, 357 Mass. 728, 736 (1970).

² Lilli Hsieh et al., FN1 of *Intellectual Property Crimes* 35 Am. Crim. L. Rev. 899, 942 (1998).

³ Brandon B. Cate, *Saforo & Associates, Inc. v. Porocel Corp.: The Failure of the Uniform Trade Secrets Act to Clarify the Doubtful and Confused Status of Common Law Trade Secret Principles* 53 Ark. L. Rev. 687 (2000).

⁴ See J. Derek Mason et al., *The Economic Espionage Act: Federal Protection for Corporate Trade Secrets*, 16 No. 3 COMPUTER LAW 14, 15 (1999). See also Lilli Hsieh et al., *supra*, at Note 2.

⁵ See Jay Folberg, et al., *Resolving Disputes: Theory, Practice and Law* 5 (1st ed. 2005) (“[L]itigation, with all of its procedural protections is slow, costly, and relatively inflexible.”).

⁶ Roger M. Milgrim & Eric E. Bensen, *Milgrim On Trade Secrets* § 18.01 (2007).

⁷ *Id.*

⁸ *Weigh Systems South Inc. v. Mark's Sales Equip.*, 347 Ark. 868 (2002) (Insufficient efforts to maintain secrecy).

⁹ See generally Roald Dahl, *Charlie and the Chocolate Factory* (2007). See also CHARLIE AND THE CHOCOLATE FACTORY (Warner Bros. Pictures 2005); and WILLY WONKA AND THE CHOCOLATE FACTORY (David L. Wolper Productions 1971).

¹⁰ Dahl, *supra*, at 9.

¹¹ *Water Services, Inc. v. Tesco Chemicals, Inc.*, 410 F. 2d 163 (5th Cir. 1969).

¹² Milgrim, et. al, *supra*, at §18.01.

¹³ *Id.*

¹⁴ For the definition of “misappropriation” see Uniform Trade Secrets Act §1(2), 14 U.L.A. 372 (1990). See also Mass. Gen. Laws ch. 93, § 42. See also *Data Gen. Corp. v. Grumman Sys. Support Corp.*, 36 F.3d 1147, 1165 (1st Cir. 1994) (The requirements for a common law claim under Massachusetts law are 1. The information is a trade secret; 2. The plaintiff took reasonable steps to preserve the secrecy of the information; and 3. The defendant used improper means, in breach of a confidential relationship, to acquire and use the trade secret.).

¹⁵ Uniform Trade Secrets Act § 1(4), 14 U.L.A. 433 (1990) (emphasis added).

¹⁶ Massachusetts is among the minority of states that has not adopted the Uniform Trade Secrets Act. For the purposes of comparison in this paper, both the Uniform Trade Secrets Act and Massachusetts trade secret laws are cited.

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- ¹⁷ Mass. Gen. Laws ch. 266, § 30.
- ¹⁸ Milgrim, et al., supra at § 18.01.
- ¹⁹ Id.
- ²⁰ See supra Note 14.
- ²¹ Uniform Trade Secrets Act, supra, §1(4). See also Mass. Gen. Laws, supra, ch. 266, § 30. See also Data General Corp., supra at Note 14.
- ²² A trade secret cause of action may be brought based on tort theory. See Restatement (First) of Torts §757 (1939), Uniform Trade Secrets Act, supra, §1(4); Restatement of Unfair Competition § 40; and Mass. Gen. Laws ch. 93, § 42.
- ²³ Uniform Trade Secrets Act, supra, §3. See also Mass. Gen. Laws ch. 93A.
- ²⁴ Milgrim, et al., supra § 18.01.
- ²⁵ Id.
- ²⁶ See supra Note 5.
- ²⁷ Smith v. Dravo Corp., 203 F. 2d 369, 375 (7th Cir. 1953).
- ²⁸ See generally Stephen M. McJohn, Intellectual Property: Examples and Explanations 343-403 (2nd ed. 2006).
- ²⁹ See supra Note 5.
- ³⁰ See supra Note 28.
- ³¹ Daniel Newman, et al., Intellectual Property Crimes, 44 Am. Crim. L. Rev. 693 (2007).
- ³² See supra Note 3.
- ³³ Milgrim, et al, supra, at §18.01.
- ³⁴ Id.
- ³⁵ Milgrim, et al, supra, at §18.03.
- ³⁶ Milgrim, et al., supra, at § 18.01.
- ³⁷ Milgrim et al., supra, at § 18.03.
- ³⁸ See Supra Note 11.
- ³⁹ Milgrim, et al., supra, at § 18.01.
- ⁴⁰ Dahl, supra, at 9.
- ⁴¹ Id. at 7, 9.
- ⁴² Id.
- ⁴³ Id. at 81.
- ⁴⁴ Id. at 118-124.
- ⁴⁵ See generally Dahl, supra.
- ⁴⁶ Id. at 10.
- ⁴⁷ Id. at 10-11.
- ⁴⁸ Id. at 11.
- ⁴⁹ Id. at 11-12.
- ⁵⁰ Id. at 15.
- ⁵¹ Id.
- ⁵² Id.
- ⁵³ Id. at 16.
- ⁵⁴ Id.
- ⁵⁵ Id.
- ⁵⁶ Id. at 68-69.
- ⁵⁷ Id. at 70-71.
- ⁵⁸ Id.
- ⁵⁹ See generally Dahl, supra.
- ⁶⁰ Dahl, supra, at 18.
- ⁶¹ Id.
- ⁶² See generally WILLY WONKA AND THE CHOCOLATE FACTORY (David L. Wolper Productions 1971).

⁶³ Id.
⁶⁴ Id.
⁶⁵ See supra Note 11.
⁶⁶ See generally Dahl, supra.
⁶⁷ Id.
⁶⁸ See supra Notes 17 and 18.
⁶⁹ Id.
⁷⁰ Dahl, supra, at 11-12.
⁷¹ See supra Notes 17 and 18.
⁷² Dahl, supra.
⁷³ Id.
⁷⁴ Milgrim, et al., supra, at § 18.03.
⁷⁵ Id.
⁷⁶ See WILLY WONKA AND THE CHOCOLATE FACTORY (David L. Wolper Productions 1971).
⁷⁷ See supra Note 8.
⁷⁸ See generally Dahl, supra.
⁷⁹ See supra Note 3.
⁸⁰ Milgrim, et al., supra, at §18.03.
⁸¹ See generally Dahl, supra.
⁸² Id.
⁸³ See WILLY WONKA AND THE CHOCOLATE FACTORY (David L. Wolper Productions 1971).
⁸⁴ Id.

⁸⁵ Id.
⁸⁶ Id. at 20.
⁸⁷ See WILLY WONKA AND THE CHOCOLATE FACTORY (David L. Wolper Productions 1971).
⁸⁸ Id.
⁸⁹ Id.
⁹⁰ Milgrim, et al. supra, at § 18.02.
⁹¹ See WILLY WONKA AND THE CHOCOLATE FACTORY (David L. Wolper Productions 1971).
⁹² See WILLY WONKA AND THE CHOCOLATE FACTORY (David L. Wolper Productions 1971) (Trivia: The combination to the first door in the chocolate factory is 99-44/100% pure, which was an ad slogan for Ivory Soap.).
⁹³ Id.
⁹⁴ Id.
⁹⁵ Id.
⁹⁶ Id.
⁹⁷ Id.
⁹⁸ See Conagra, Inc. v. Tyson Foods, Inc., 342 Ark. 672 (2000).
⁹⁹ See WILLY WONKA AND THE CHOCOLATE FACTORY (David L. Wolper Productions 1971).
¹⁰⁰ Id.
¹⁰¹ Id.

¹⁰² Id.
¹⁰³ Id.
¹⁰⁴ Id.
¹⁰⁵ Id.
¹⁰⁶ Id.
¹⁰⁷ See generally Dahl, supra.
¹⁰⁸ See supra Note 28.
¹⁰⁹ Id.
¹¹⁰ Sheridan v. Mallinckrodt, Inc., 568 F. Supp. 1347, 1351 (D.N.Y. 1983).
¹¹¹ Id.
¹¹² Matthew Bender & Company, Inc., Intellectual Property Counseling & Litigation § 5.04[3] (2007).
¹¹³ A.H. Emery Co. v. Marcan Products Corp., 389 F.2d 11,16 (2nd Cir. 1968) (“substantial secrecy” standard).

¹¹⁴ Milgrim, et. al., supra, at § 18.04.

¹¹⁵ Cadillac Gage Co. v. Verne Engineering Corp., 203 U.S.P.Q. 473 (Mich. Cir. Ct. 1978) (alleged trade secrets distributed in advertising materials lost element of secrecy.).

¹¹⁶ See WILLY WONKA AND THE CHOCOLATE FACTORY (David L. Wolper Productions 1971).

¹¹⁷ See supra Note 116.

¹¹⁸ Dahl, supra at 152.

¹¹⁹ Id.

¹²⁰ See supra Note 75.

¹²¹ Matthew Bender & Company, Inc., Intellectual Property Counseling & Litigation § 5.04 [6] (2007) (Examples of possible security precautions.).

¹²² Id.

¹²³ Id.

¹²⁴ Minnesota Mining & Manufacturing Co. v. Technical Tape Corp., 192 N.Y.S.2d 102 (Sup. Ct. 1959).

¹²⁵ Milgrim, et al., supra, at § 7.03.

¹²⁶ Id.

¹²⁷ Milgrim, et al., supra, at § 18.

¹²⁸ Milgrim, et al. supra at § 18.01.

¹²⁹ Milgrim, et al., supra, at § 18.03.

¹³⁰ Milgrim, et al., supra, § 18.02.

¹³¹ Id.

¹³² Id.

¹³³ Milgrim, et al., supra, § 18.04.

¹³⁴ See generally Dahl, supra.

¹³⁵ Id.

¹³⁶ Milgrim, et al., supra, at 18.01.

¹³⁷ Milgrim, et al., supra, at § 7.03.

¹³⁸ Milgrim, et al., supra, at § 18.01.

¹³⁹ Milgrim, et al., supra, at § 18.03.

¹⁴⁰ See supra Note 100.

¹⁴¹ Milgrim, et al., supra, at § 18.01 (“there are potential downsides to such a trade secret protection program. If it is handled artlessly or heavy handedly, it can result in employees' feeling as if they are living in a police state and can polarize the enterprise and its employees. It may take on a life of its own, and impose such inflexibility that the most creative workers and best performers will recoil.”).

¹⁴² See WILLY WONKA AND THE CHOCOLATE FACTORY (David L. Wolper Productions 1971).

¹⁴³ Milgrim, et al., supra, at § 18.03.

¹⁴⁴ Dahl, supra, at 151-152.

¹⁴⁵ Milgrim, et al., supra, at § 18.03.

¹⁴⁶ Id.

¹⁴⁷ Id.

¹⁴⁸ Milgrim, et al., supra, at §5.01.

¹⁴⁹ Milgrim, et al, supra, at § 18.01.

¹⁵⁰ Milgrim, et al., supra, at § 18.03.

¹⁵¹ Milgrim, et al., supra, at § 18.01.

¹⁵² See supra Note 100.

¹⁵³ Id.

¹⁵⁴ Milgrim, et al., supra, at § 7.03.

¹⁵⁵ Water Services, Inc. v. Tesco Chemicals, Inc., 410 F. 2d 163 (5th Cir. 1969).

¹⁵⁶ See generally Dahl, *supra*.

¹⁵⁷ Milgrim, et al., *supra*, at § 18.02.

¹⁵⁸ Milgrim, et al., *supra*, at § 6.

¹⁵⁹ Id.

¹⁶⁰ Milgrim, et al., *supra*, at § 18.01.

¹⁶¹ Milgrim, et al., *supra*, at § 18.04.

¹⁶² See generally Dahl, *supra*.

¹⁶³ See *supra* Note 9.

¹⁶⁴ Milgrim, et al., *supra*, at § 7.

¹⁶⁵ See *supra* Note 23.

¹⁶⁶ Milgrim, et al., *supra*, at § 7.

¹⁶⁷ See generally Dahl, *supra*.

¹⁶⁸ Milgrim, et al., *supra*, at § 7.

¹⁶⁹ Id.

¹⁷⁰ Id.

¹⁷¹ Milgrim, et al, *supra*, at § 7.

¹⁷² See *supra* Note 112.

¹⁷³ See Chrysler Corp. v. Brown, 441 U.S. 281 (1979).

¹⁷⁴ See *supra* Note 100.

¹⁷⁵ See *supra* Note 75.

¹⁷⁶ Milgrim, et al., *supra*, at § 6.02.

¹⁷⁷ See *supra* Note 11.

¹⁷⁸ Milgrim, et al., *supra*, at § 18.

¹⁷⁹ See *supra* Note 2.

¹⁸⁰ See Jerry Cohen, et al, Trade Secrets Protection and Exploitation 513-514 (March 2001).