

Pierre OLLIVIER's slides

**DO'S AND DON'TS IN THE PROTECTION
AND VALUATION OF TRADE SECRETS:
A PRACTICAL MANAGEMENT APPROACH**



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The law on Trade Secrets in France

- The Law n°2018-670 of July 30, 2018 concerning protection of trade secrets
 - Implementing decree n°2018-1126 of December 11, 2018, transposing the Directive (EU) 2016/943 of the European Parliament and of the Council of June 8, 2016 on the protection of undisclosed know-how and business information (trade secrets) against unlawful obtaining, use and disclosure.
- First case law in France : Court of Appeal of Versailles, 6th chamber, February 27, 2020, n° 19/03646
 - A company accused an employee of trade secret violation. It considered he had transferred from his professional e-mail account to his personal e-mail account, e-mails containing company confidential information, obtained in an illicit manner, for his personal use or that of a competitor.
 - The employee objected no secrecy, absence of violation and, in the alternative, lack of opposability of secrecy with respect to the right to defend oneself, having made these transfers to build up evidence in context of a future dispute concerning his dismissal.
 - The court rejected the company's claims
- Take away : it should be made clearer to employees what can and cannot be transferred and copied to a personal computer and in what context. And also, the law alone is not enough to protect business secrets : management has to take specific actions.



What are the battles worth fighting about Business Secrets?

- Secrecy is important to support business continuity and long-term business value
 - Value to companies comes more and more mainly from secrecy versus patents
 - Security took 30 years to become a state of mind: how long again for secrets?
- Nobody can secure 100% of its assets against all dangers ! The example of the farmer
 - What danger? Wind? Sun? Insects? Rain? Plant disease? Boars? Deers? Rabbits?
 - What to protect? Seed? Plants? Feed? Fields? Silos? Buildings?
 - There needs to be a priority list and a priority actions list: what, why and how?
- Value is the key component of a management decision
 - Talk of *Business Secrets* (management language) vs *Trade Secrets* (legal language)
 - Keep it simple for non-legal expert managers = avoid legal complexity to managers
 - Legal aspects will then support a clearly articulated company strategy



How to create and execute a strategy dealing with Business Secrets?

- The field and operational aspects are key : investors and strategic partners will more and more watch secret strategy and operations
 - Shop floor (tools & policy), Operations (processes), Behavior (people)
 - "*Business Secrets*" must become a state of mind
 - Compare facts with published statistics on information leakage
- Some key aspects to remember
 - Protecting assets from the start (hiring) to the end (leaving) and even after
 - Who are the key people?
 - Don't limit to NDA's !
 - What happens when people are transferred due to M&A operations?
 - Watch all company processes : internal and external ones. For example:
 - ✓ collaborative R&D, open platforms, internal development vs external contracting, logistics



The LIT Business Secrets Stream

Goals

- Focus on importance of a strategy + good execution
- Contribute in coordination with existing LESI work on the value of business secrets
- Publish a practical **book for managers and business owners** on business secrets strategy, management and valuation (*addresses today's Montreal workshop topics* 😊).
- More specifically:
 - Why trade secrets is or should be a concern for companies? Business secrets increase asset value; Business Secrets legal and other protections; Business Secrets in contractual strategies; Defense and Litigation strategies

Status of the book

- Draft complete at 80%; room still exists for new contributions
- Anyone welcome to contribute



The team

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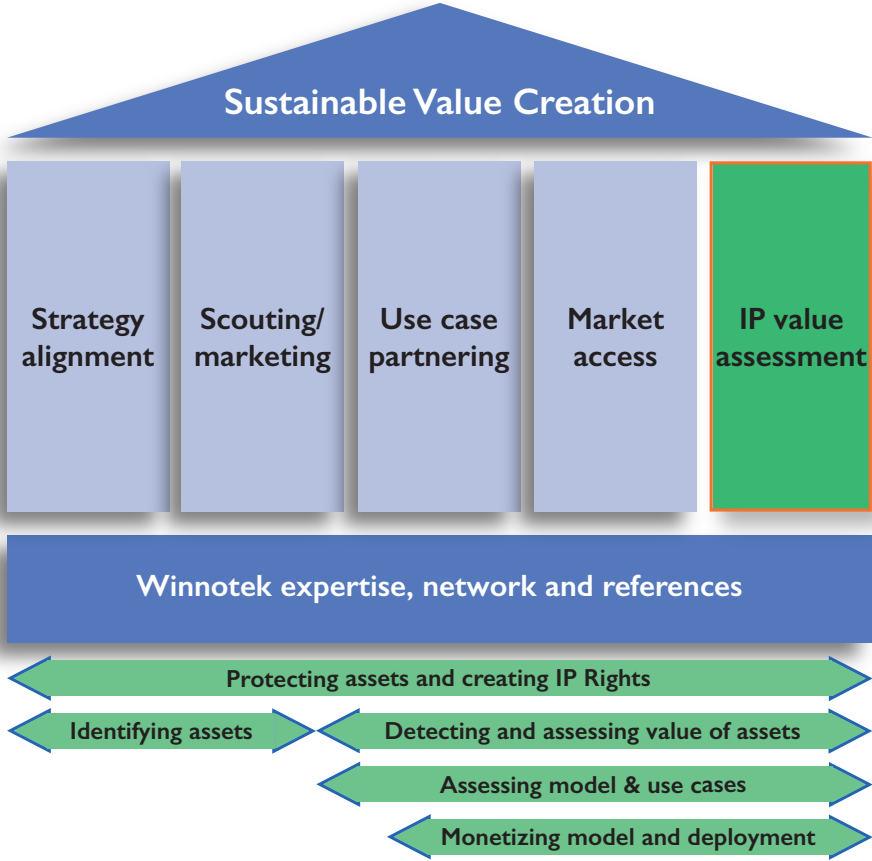

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And ... anyone, who would like to contribute ! 😎 🏗️



Winnotek's partners are members of LES France



Sustainable Value Creation

Strategy alignment Scouting/ marketing Use case partnering Market access **IP value assessment**

Winnotek expertise, network and references


Protecting assets and creating IP Rights

Identifying assets Detecting and assessing value of assets

Assessing model & use cases

Monetizing model and deployment

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