
STATUTORY INSTRUMENTS

2018 No. 597

The Trade Secrets (Enforcement, etc.) Regulations 2018

Assessment of damages

17.—(1) On the application of an injured party, a court must order an infringer, who knew or ought to have known that unlawful acquisition, use or disclosure of a trade secret was being engaged in, to pay the trade secret holder damages appropriate to the actual prejudice suffered as a result of the unlawful acquisition, use or disclosure of the trade secret.

(2) A court may award damages under paragraph (1) on the basis of either paragraph (3) or (4).

(3) When awarding damages under paragraph (1) on the basis of this paragraph, a court must take into account all appropriate factors, including in particular—

- (i) the negative economic consequences, including any lost profits, which the trade secret holder has suffered, and any unfair profits made by the infringer, and
- (ii) elements other than economic factors, including the moral prejudice caused to the trade secret holder by the unlawful acquisition, use or disclosure of the trade secret.

(4) When awarding damages under paragraph (1) on the basis of this paragraph, a court may, where appropriate, award damages on the basis of the royalties or fees which would have been due had the infringer obtained a licence to use the trade secret in question.