

Civil Remedies and Damages Claims under Taiwan's Trade Secrets Act

The logo for Eiger Law, featuring the word "eiger" in a white, lowercase, serif font with a dot over the 'i', set against a solid orange background.

Heather HSIAO
Senior Associate

www.eigerlaw.com

Introduction to Infringement of Trade Secrets and Remedies



Infringement



Trade Secrets



Remedies



Available Statutory Rights of Claims Against Trade Secret Infringement — Civil Remedies



1. Right to Claim Damages—Art.12.1
1. Right to Claim for the Removal of an Infringement—Art.11.1
3. Right to Claim for the Prevention of an Infringement—Art.11.1
3. Request the Destruction or Disposal of Products or Items Resulting from an Infringement —Art. 11.2



Right to Remedies— Claim for Non-Action or Claim for Enjoinment



Art. 11.1

Right to Claim for the Removal of an Infringement

If a trade secret has been infringed, the injured party may request for the removal of such infringement.

Right to Claim for the Prevention of an Infringement

If there is a likelihood of an infringement, the injured party may request the prevention of the infringement.

Art. 11.2

Request for Destruction or Disposal of Infringing Products

Request for the destruction or other necessary dispositions of products generated from the infringement or items used exclusively in the infringement.

- Not an independent ground.

**Right to Remedies——
Claim for Non-Action or Claim for Enjoinment**

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**Mental Element (mens rea)
—— Intent or Negligence?**



What about statute of limitations?

Right to Claim Damages

Art. 12.1 A party who intentionally or negligently infringes another's trade secret shall be liable for damages.

1. Mental Element: Intent or Negligence
2. Statute of Limitation:

Art. 12.2 Two Methods of Calculating Time Limits

- From the time of discovery
- From the time an infringement first occurred





**What constitutes discovery?
How does the court determine it?**

**Who is entitled to bring an
infringement action?**



Act of Infringement



Torts Liability Requirement



May Incur Liability
for Damages



Damages Occur



Calculate Damages

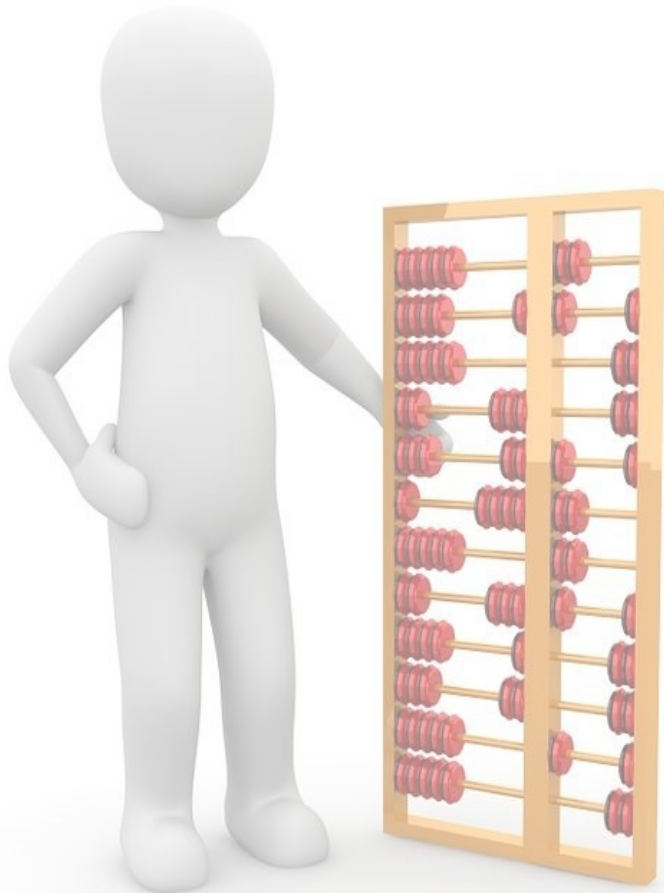


Difficulties in Calculating Amount of Damages

- **Market Price?**
- **Valuation Variables?**
- **Has the Trade Secret Been Used or Not?**
- **Causation?**



Calculation of Damages



1. **Compensate for Loss**
2. **Compensate for Loss of Profit**
3. **Disgorge Profit Earned by the Infringer**
4. **Amount of Total Sales**
5. **Punitive Damages**

Compensate for Loss

Art. 13.1.1

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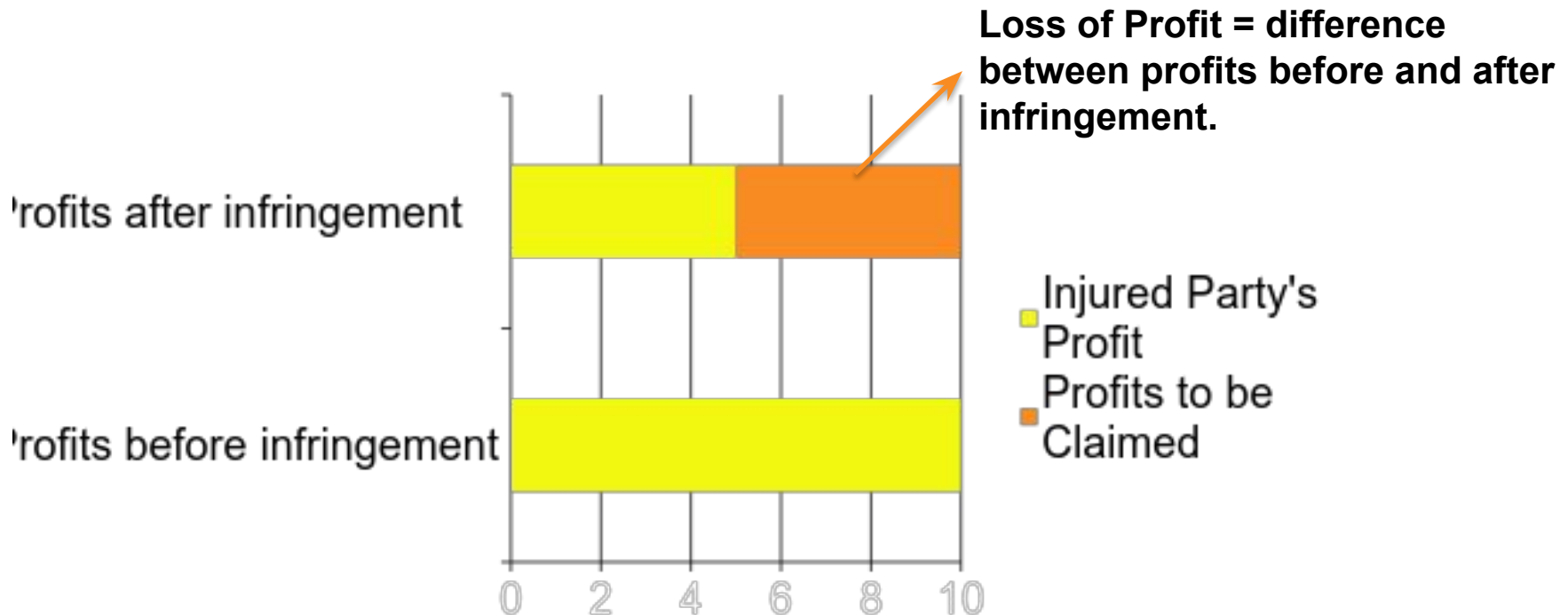
Loss = Actual Injury + Lost Interests



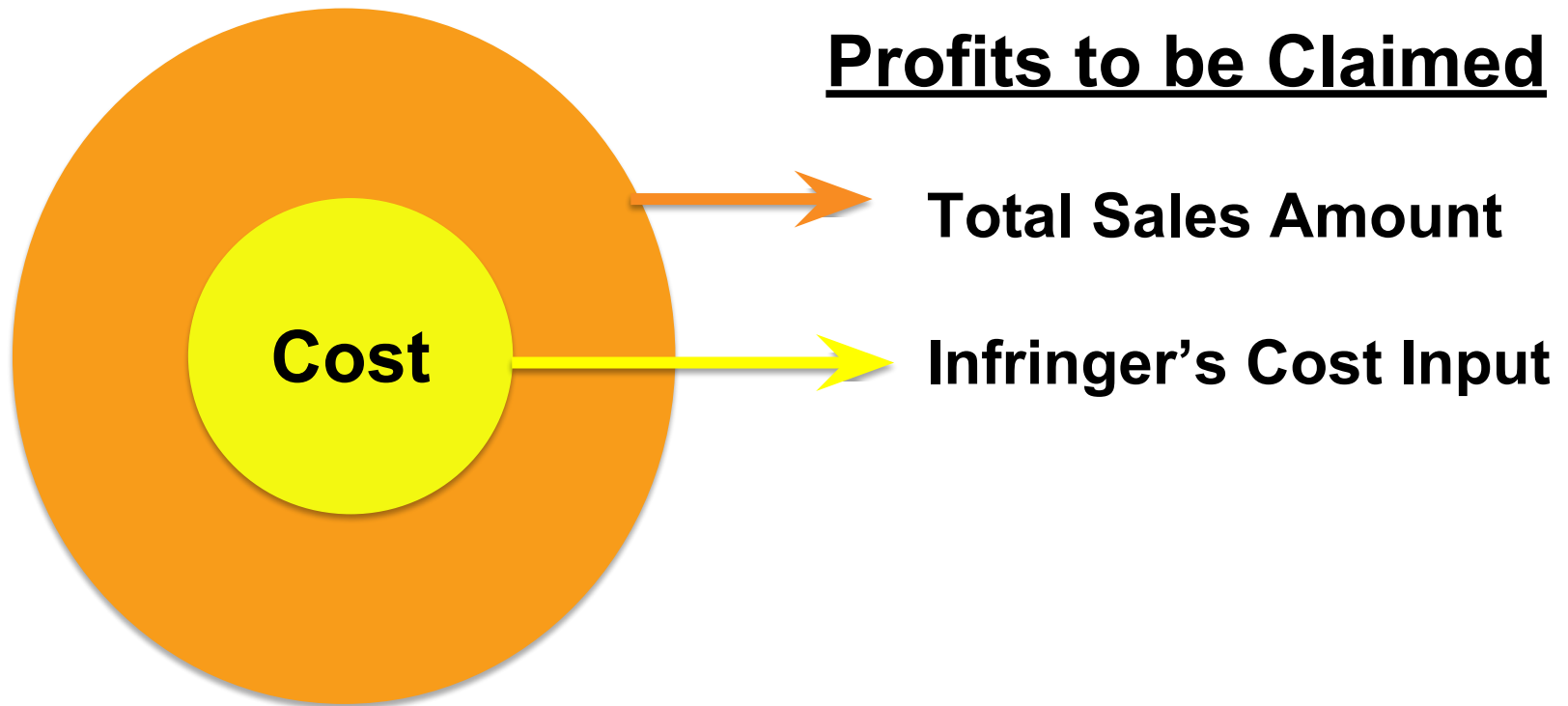
Compensate for Loss of Profit

Art. 13.1.1 Proviso

If the injured party is unable to prove the amount of damages, the party may take as damages the amount of profit normally expected from the use of this particular trade secret, minus the amount of profits earned after the infringement.



The Profit Earned by the Infringer



Total Sales Earned by the Infringer



Art. 13.1.2 Proviso

If the infringer is unable to prove or ascertain the costs involved in producing the infringed products, then the total income (i.e., total sales) gained from selling the infringed products shall be deemed as the profit to be claimed.

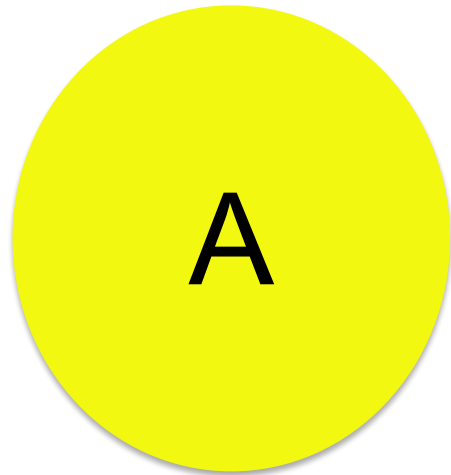


Punitive Damages

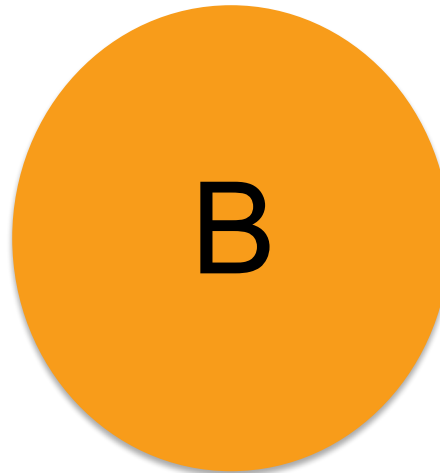
Art. 13.2

Calculated by ascertaining the amount of damages incurred first.

Ascertained Damages



Punitive Damages



$$A + B \leq 3A$$

Elements:

- Intention to infringe
- Claimant must claim for punitive damages
- Maximum amount: 3x the amount of ascertained damages



Is it necessary to have statutory damages?

Compared to other intellectual property rights and calculations of damages?



The image shows four business professionals in a modern office setting. They are silhouetted against a large window that offers a view of a city. The professionals are engaged in a conversation. The office has a blue carpet and a modern ceiling with recessed lighting. The overall atmosphere is professional and collaborative.

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Thank you for your attention.