**23.15 Theft of Trade Secrets (18 U.S.C. § 1832)**

The defendant is charged in [Count\_\_\_\_\_\_ of] the indictment with theft of trade secrets in violation of Section 1832 of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant intended to convert a trade secret to the economic benefit of someone other than the owner of that trade secret;

Second, the trade secret is related to a [[product] [service]] [[used in] [intended for use in]] [[interstate] [foreign]] commerce;

Third, the defendant [intended] [knew] that the offense would injure any owner of that trade secret;

Fourth, the defendant knowingly:

[[stole] [without authorization [appropriated] [took] [carried away] [concealed]] [obtained by fraud] [obtained by artifice] [obtained by deception] such information];

*or*

[without authorization [copied] [duplicated] [sketched] [drew] [photographed] [downloaded] [uploaded] [altered] [destroyed] [photocopied] [replicated] [transmitted] [delivered] [sent] [mailed] [communicated] [conveyed] such information];

*or*

[[received] [bought] [possessed] such information, knowing the same to have been [stolen] [appropriated without authorization] [obtained without authorization] [converted without authorization]].

**Comment**

Use this instruction in “general criminal trade secrets” cases in which the benefit is “economic,” and not for the benefit of a foreign government or instrumentality. *United States v. Liew*, 856 F.3d 585, 597 (9th Cir. 2017) (quoting *United States v. Hsu*, 155 F.3d 189, 195-96 (3d Cir. 1998)).

If the indictment charges conspiracy to commit theft of trade secrets (18 U.S.C. § 1832(a)(5)), the jury should be instructed that it is not necessary for the government to prove that the information the alleged conspirators intended to convert was, in fact, a trade secret. What is required is proof beyond a reasonable doubt that the defendant and at least one other member of the conspiracy knowingly agreed to convert information that they reasonably believed was a trade secret and did so for the economic benefit of anyone other than the owner. This is because the defendant’s guilt or innocence on this charge depends on what he believed the circumstances to be, not what they actually were. *See Liew*, 856 F.3d at 594, 600; *United States v. Nosal*, 844 F.3d 1024, 1044-45 (9th Cir. 2016).

Similarly, if the indictment charges attempt to commit theft of trade secrets (18 U.S.C. § 1832(a)(4)), the jury should be instructed that the government is not required to prove that the information the defendant is alleged to have attempted to convert was, in fact, a trade secret. However, the government is required to prove the defendant reasonably believed that the information the defendant intended to convert was a trade secret. *Id*.

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