

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

WAYMO LLC,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,

Defendant.

C.A. No. C 17-00939

**JURY INSTRUCTIONS**

Ladies and gentlemen of the jury:

Now that you have heard the arguments of counsel, it is my duty to give you the instructions of the court concerning the law which governs this case.

It is your duty as jurors to follow the law as I shall state it to you and to apply that law to the facts as you find them from the evidence presented.

**I. OUTLINE OF CASE**

In this case, Waymo contends that defendant Uber Technologies, Inc., through its acquired company misappropriated what Waymo contends are its Trade Secrets.

A “trade secret” involves information and can potentially cover any form of business, scientific, technical, or engineering information, including plans, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized electronically or in writing. Whether or not any particular information qualifies as a trade secret depends upon factors that I will

describe in a moment but, by way of introduction, I want you to understand that a trade secret concerns information.

## **II. ELEMENTS OF MISAPPROPRIATION**

To succeed on its claim of alleged misappropriation of any of Waymo's alleged Trade Secrets, Waymo must prove all of the following:

1. That the alleged Trade Secret qualified as an enforceable trade secret at the time it was allegedly misappropriated;
2. That Uber improperly acquired, then used or disclosed the alleged Trade Secret to its advantage.

It is for you, the jury, to decide whether or not all of these elements have been proven. I will now explain these elements of proof in more detail.

### **a. ENFORCIBLE TRADE SECRET**

Turning to the first element of proof for a misappropriation claim, Waymo must prove that its alleged Trade Secrets qualified as enforceable trade secrets at the time of alleged misappropriation. To do so, Waymo must prove all of the following:

1. That Waymo owned the alleged Trade Secret;
2. That the alleged Trade Secret was secret at that time;
3. That the alleged Trade Secret had actual or potential independent economic value at that time because it was secret; and
4. That Waymo made reasonable efforts up to the alleged misappropriation to keep secret the alleged Trade Secret.

### **i. SECRECY**

The secrecy required to prove that something is a trade secret does not have to be absolute secrecy in the sense that no one else in the world possessed the information at the relevant time. It may have been disclosed to employees involved in the owner's use of the trade secret as long as they were instructed to keep the information secret. It may also have been disclosed to nonemployees if they were obligated to keep it secret. However, it must not have been generally known to the public or to others who could have obtained value from knowing it.

### **ii. REASONABLE EFFORTS TO KEEP SECRET**

Reasonable efforts to keep the information secret are the efforts that would have been made by a reasonable business in the same situation with the same knowledge and resources as the alleged owner, exercising due care to protect important information of the same kind. In determining whether or not the owner made reasonable efforts to keep the information secret, the following factors should be considered, among any other factors pertinent to the issue:

1. Whether the owner instructed its employees to treat the information as confidential;
2. Whether the owner restricted access to the information to persons who had a business reason to know the information;
3. Whether the owner kept the information in a restricted or secured area;

4. Whether the owner required employees or others with access to the information to sign confidentiality or nondisclosure agreements; and
5. Whether there were other reasonable measures available to the owner that it did not take.

The presence or absence of any one or more of these factors is not necessarily determinative.

#### **b. INFORMATION USED OR DISCLOSED**

Turning to the second element of proof for a misappropriation claim for damages, Waymo must also prove that the alleged Trade Secret was used or disclosed by Uber, directly or through its acquired company, Ottomotto, without Waymo's consent and that Uber either acquired knowledge of the trade secret by improper means or at the time of use, knew or had reason to know that its knowledge of the trade secret came through persons who had acquired it by improper means. Improper means of acquiring a trade secret or knowledge of a trade secret include, but are not limited to, theft, misrepresentation, and breach or inducing a breach of a duty to maintain secrecy.

Misappropriation by use requires actual use. It is not enough to speculate that employees of Uber would inevitably have used the claimed trade secret in their work. In this connection, you have heard testimony that Mr. Levandowski once worked for Waymo. The mere fact that Mr. Levandowski left Waymo to work for Uber or its acquired company, Ottomotto, does not automatically mean that Uber used Waymo's trade secrets to its advantage. Employees have the right to change

employers and to apply their talents and skills in their new jobs. Doing so is lawful as long as they don't reveal or use information qualifying as a trade secret of a prior employer.

### **JURY DIRECTIONS**

That completes my instructions to you on the law. You will now go to the Jury Room to begin deciding the case. In the jury room, you should discuss the evidence and see how it stacks up with the legal standards I am about to give you. Everyone should have a chance to speak. Be willing to take a fresh look at your own ideas, your own point of view. You may decide to change that point of view, if you conclude that another one makes better sense, better fits that proved facts and the law. But do not just walk away from your individual point of view if you remain convinced it is the correct one according to the evidence and these instructions of law.

To return a verdict, the jury must come to a unanimous conclusion—each juror must agree to it. When you have reached that conclusion, you will fill out the Verdict Form and have whomever you choose to be your foreperson sign it. Then advise the court officer that you have reached a verdict.

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**VERDICT FORM**

State whether or not Waymo has proven the following parts of its claim for misappropriation against Uber Technologies, Inc. Answer “Yes” or “No” for each question.

	Yes	No
1. Has Waymo proved that its alleged trade secret qualified as an enforceable trade secret at the time it was allegedly misappropriated?		
2. Has Waymo proved that Uber improperly acquired and then used or disclosed the alleged trade secret to its advantage?		

Signed by Jury Foreperson: \_\_\_\_\_