N.C.P.I.—Civil—813.92
MISAPPROPRIATION OF TRADE SECRET—ISSUE OF MISAPPROPRIATION
GENERAL CIVIL VOLUME
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813.92 MISAPPROPRIATION OF TRADE SECRET[1]—ISSUE OF MISAPPROPRIATION

The *(state number)* issue reads:

"Did the defendant misappropriate the plaintiff's trade secret?"[2]

You will answer this issue only if you have answered the *(state number)* issue "Yes" in favor of the plaintiff. On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, that the defendant misappropriated the trade secret of the plaintiff. "Misappropriation" means the [acquisition] [disclosure] [use] of a trade secret of another person without such person's express or implied consent.[3]

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1 Trade Secrets Protection Act, N.C. Gen. Stat. §§ 66-152 *et seq.*

2 *NOTE WELL: The protections of the Act extend only to the "owner" of the trade secret. Presumably, "owner" would be interpreted broadly enough to include a bona fide licensee of an owner of a trade secret. If the plaintiff's "ownership" of the trade secret is in dispute, a second element should be added to this instruction so that the statement of the elements reads as follows:*

"First, that the plaintiff is the owner of the trade secret. (A licensee of the true owner of a trade secret is considered an owner.)

"Second, that the defendant misappropriated the trade secret of the plaintiff."

3 N.C. Gen. Stat. § 66-152(1). *See Medical Staffing Network, Inc. v. Ridgway*, 194 N.C. App. 649, 658, 670 S.E.2d 321, 328 (2009). Misappropriation may be proved by direct or circumstantial evidence. *See Byrd's Lawn & Landscaping, Inc. v. Smith*, 142 N.C. App. 371, 376, 542 S.E.2d 689, 693 (2001) (holding that the plaintiff's circumstantial evidence was sufficient to support a trade secret misappropriation cause of action); *Sunbelt Rentals v. Head & Engquist Equip., L.L.C.*, 174 N.C. App. 49, 57-58, 620 S.E.2d 222, 229 (2005), *disc. review denied*, 360 N.C. 296, 629 S.E.2d 289 (2006) (holding that circumstantial evidence of the defendant's access to trade secrets combined with a substantial increase in the defendant's business, and concurrent, substantial decrease in the plaintiff's business in the same locations, during the same time period, was sufficient to establish a *prima facie* case of misappropriation of trade secrets). *See generally Washburn v. Yadkin Valley Bank & Trust Co.*, 190 N.C. App. 315, 327, 660 S.E.2d 577, 586 (2008) (holding that, in order to state a claim under the Trade Secrets Protection Act, a plaintiff must "identify with sufficient specificity either the trade secrets [ ] allegedly misappropriated or the acts by which the alleged misappropriation were accomplished"); *Barbarino v. Cappuccine, Inc.*, 2012 N.C. App. Lexis 305, *14–15, 722 S.E.2d 211 (N.C. Ct. App. 2012) (unpublished) (holding that *Washburn* test controls), *aff'd per curiam*, ___ N.C. ___, 734 S.E.2d 570 (2012).

Finally, as to the *(state number)* issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the defendant misappropriated the plaintiff's trade secret, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.