**11.3 Trade Secrets – Affirmative Defense – Lawful Means of Acquisition**

Discovery of a trade secret by lawful means is permitted under the law. [Name of defendant] did not use improper means to obtain [name of plaintiff]’s trade secret(s) if [name of defendant] proves that [name of trade secret] was lawfully acquired by [name of defendant] at the time of the alleged misappropriation.

Lawful acquisition by [name of defendant] may include reverse engineering, independent derivation, or other lawful means.

Reverse Engineering. [Name of defendant] has the right to disassemble and scrutinize products that are available on the marketplace and obtained through that marketplace. “Reverse engineering” is the process of starting with a lawfully obtained product and then working backwards to figure out how the product was developed or manufactured, or to determine the ingredients or make-up of that product. If [name of defendant] acquired the information by reverse engineering a lawfully obtained product, then there was no misappropriation.

Independent Derivation. [Name of defendant] has the right to independently obtain, discover, develop, or compile [name of plaintiff]’s trade secret(s). For example, information can be lawfully acquired if [name of defendant] derived [name of trade secret] from publicly available sources.

**Special Interrogatories to the Jury**

**Do you find by a preponderance of the evidence that:**

1. [Name of defendant] lawfully acquired [name of plaintiff]’s trade secret by reverse engineering, independent derivation, or in some other lawful way?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “Yes,” this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is “No,” go to the next question.