

INVASION OF PRIVACY--APPROPRIATION OF NAME OR LIKENESS FOR COMMERCIAL USE.<sup>1</sup>

The (*state number*) issue reads:

"Did the defendant appropriate the [name] [likeness] of the plaintiff for the defendant's own commercial use and benefit without the plaintiff's consent?"

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, two things:<sup>2</sup>

First, that the defendant appropriated the plaintiff's [name] [likeness] for the defendant's own commercial use and benefit. ("Name" includes a person's reputation, prestige, social or commercial standing, or other values publically associated with him.) ("Likeness" includes a person's image, whether republished or rebroadcast by photograph, drawing or caricature.)<sup>3</sup>

And Second, that the plaintiff did not consent to the defendant's appropriation of *his* [name] [likeness].

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the

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<sup>1</sup>North Carolina has not yet recognized invasion of privacy torts for public disclosure of private facts about the plaintiff, *Hall v. Post*, 323 N.C. 259, 372 S.E.2d 711 (1988), or publicity that places the plaintiff in a false light in the public eye, *Renwick v. News and Observer Pub. Co.*, 310 N.C. 312, 312 S.E.2d 405 (1983).

<sup>2</sup>*Flake v. Greensboro News Co.*, 212 N.C. 780, 790, 195 S.E. 55, 64 (1938); *Barr v. Southern Bell Tel. & Tel. Co.*, 13 N.C. App. 388, 392, 185 S.E.2d 714, 717 (1972).

<sup>3</sup>The Pattern Jury Committee has hypothesized situations where this tort could be extended to other attributes of a person (e.g., voice, signature, symbols) misappropriated for unauthorized commercial exploitation, but there are no appellate decisions which have so established.

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USE. (Continued).

defendant appropriated the plaintiff's [name] [likeness] for the  
defendant's own commercial use and benefit without the plaintiff's  
consent, 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.