

N.C.P.I.—Civil—813.00  
 TRADE REGULATION  
 GENERAL CIVIL VOLUME  
 JUNE 2013

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 813.00 TRADE REGULATION

Preface

*Chapter 75 of the General Statutes prohibits a number of acts which are considered to have a harmful impact on consumers, on competition and on commerce. Within Chapter 75 is a "little Sherman Act" (§ 75-1), a "little FTC Act" (§ 75-1.1) and a host of other statutes<sup>1</sup> which proscribe specific types of conduct. In addition, N.C. Gen. Stat. § 75-2 specifically preserves common law antitrust prohibitions and subjects violators of the common law to N.C. Gen. Stat. § 75-1 liability. The violation of some of these statutes is a criminal offense; the violation of others of these statutes merely subjects the violators to civil penalty assessments by the Attorney General.*

*In any event, N.C. Gen. Stat. § 75-16 confers a right upon private persons to bring damage actions against the violators in certain circumstances.<sup>2</sup> N.C. Gen. Stat. § 75-16 provides:*

*If any person shall be injured or the business of any person, firm, or corporation shall be broken up, destroyed or injured by*

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<sup>1</sup> By express reference to § 75-1.1, other parts of the General Statutes also proscribe certain trade practices and make their occurrence the subject or a cause of action under Chapter 75. See § 25A-44(4) (Retail Installment Sales Act); § 66-100(e) (Business Opportunity Sales Act); § 66-111(d) (Loan Broker Statute); § 66-125(c) (Prepaid Contract Statute); § 14-118.6(d) (False Lien Claims Filed against Public Officials Statute).

<sup>2</sup> *Beware:* Special care must be exercised by the trial judge in these types of cases. Treble damages are allowed under N.C. Gen. Stat. § 75-16 for most of the violations of Chapter 75. (In some instances, treble damages are not allowed. See, e.g., N.C. Gen. Stat. § 75-56 making treble damages inapplicable to violations of N.C. Gen. Stat. § 75-50 through 55.) The jury's function in these trade regulation cases is to determine the amount of *actual* damages *only*. The trial judge—and not the jury—does the trebling. In fact, the jury is *not even to be informed* of the treble damages provision because of the possible prejudice to the plaintiff's case. However, this rule is for the protection of the plaintiff, and if the plaintiff discloses the treble damages provision to the jury he may be deemed to have waived the right to keep the treble damages rule from the jury. A compulsory pre-trial conference is strongly recommended to instruct counsel as to the impropriety of raising the fact of treble damages before the jury during the course of trial.

*reason of any act or thing done by any other person, firm or corporation in violation of the provisions of this Chapter, such person, firm or corporation so injured shall have a right of action on account of such injury done. . . .*<sup>3</sup>

*The similarities between North Carolina's statutory scheme and that of the federal antitrust laws are not accidental.<sup>4</sup> Under the federal framework, Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2) make contracts in restraint of trade and monopolies, respectively, unlawful. These statutes are criminal in nature. Private citizens obtain their civil damage relief through § 4 of the Clayton Act (15 U.S.C. § 15), a statute which is fairly similar in wording and format to N.C. Gen. Stat. § 75-16. Section 5 of the Federal Trade Commission Act prohibits unfair and deceptive trade practices. This precise wording is used in § 75-1.1, although the federal law does differ in that it confers no private right of action while § 75-1.1 does.*

*The following instructions borrow heavily from the prodigious federal decisional law which has developed since 1914 under § 4 of the Clayton Act, as well as under § 5 of the Federal Trade Commission Act. Following these federal decisional law guidelines, a plaintiff seeking treble damages must prove three, and sometimes four things:<sup>5</sup>*

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<sup>3</sup> Normally, civil actions under "antitrust" statutes do not allow a recovery for *personal* injuries. Their remedial focus is almost always on *economic* injuries. However, "antitrust" violations of the unfair and deceptive variety commonly do involve the opportunity for causing personal injury, such as where a consumer is induced to purchase a flammable garment which is advertised as "flame resistant."

<sup>4</sup> See Aycock, *Antitrust and Unfair Trade Practices Law in North Carolina --Federal Law Compared*, 50 N.C.L. Rev. 199, 201 (1972).

<sup>5</sup> Pattern instructions have not been written for violations of the Debt Collection provisions of Chapter 75 (N.C. Gen. Stat. §§ 75-50 to 75-56), the Retail Installment Sales Act (N.C. Gen. Stat. Chapter 25A), the Business Opportunity Sales Act (N.C. Gen. Stat. §§

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*First, that the defendant has violated a trade regulation statute (“issue of violation”); and*

*Second, that, where required, this violation affected commerce or occurred in commerce (“issue of commerce”); and*

*Third, that the violation injured the plaintiff, either personally or in his business (“issue of proximate cause”), and*

*Fourth, the amount of plaintiff's injuries (“issue of damages”).<sup>6</sup>*

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66-94 to 66-100), or for filing a false lien or encumbrance against the property of a public official (N.C. Gen. Stat. 14-118.6(d)). However, instructions for these, and any other violations that trigger Chapter 75 liability, will have the same basic structure as the N.C.P.I.--Civil 813.00 Instructions.

<sup>6</sup> Again, the damage issue has reference only to *actual* and not treble damages. The jury is not to be informed that damages may be trebled. See note 2, *supra*.

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*The N.C.P.I.—Civil 813.00 series is arranged according to this four part structure:*

1. Issue of violation

<i>N.C.P.I.—Civil 813.20</i>	<i>Contracts or Conspiracies in Restraint of Trade. (N.C. Gen. Stat. § 75-1.)</i>
<i>N.C.P.I.—Civil 813.21</i>	<i>Unfair Methods of Competition and Unfair and Deceptive Acts or Practices. (N.C. Gen. Stat. § 75-1.1.)</i>
<i>N.C.P.I.—Civil 813.22</i>	<i>Definition of Conspiracy</i>
<i>N.C.P.I.—Civil 813.30</i>	<i>Tying Between Lenders and Insurers. (N.C. Gen. Stat. § 75-17.)</i>
<i>N.C.P.I.—Civil 813.31</i>	<i>Unauthorized Disclosure of Tax Information. (N.C. Gen. Stat. § 75-28.)</i>
<i>N.C.P.I.—Civil 813.33</i>	<i>Unsolicited Calls by Automatic Dialing and Recorded Message Players. (N.C. Gen. Stat. § 75-30.)</i>
<i>N.C.P.I.—Civil 813.34</i>	<i>Work-at-Home Solicitations. (N.C. Gen. Stat. § 75-31.)</i>
<i>N.C.P.I.—Civil 813.35</i>	<i>Representation of Winning a Prize. (N.C. Gen. Stat. § 75-32.)</i>
<i>N.C.P.I.—Civil 813.36</i>	<i>Representation of Eligibility to Win a Prize. (N.C. Gen. Stat. § 75-33.)</i>
<i>N.C.P.I.—Civil 813.37</i>	<i>Representation of Being Specially Selected. (N.C. Gen. Stat. § 75-34.)</i>
<i>N.C.P.I.—Civil 813.38</i>	<i>Simulation of Checks and Invoices. (N.C. Gen. Stat. § 75-35.)</i>

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| <i>N.C.P.I.—Civil 813.39</i> | <i>Use of Term "Wholesale" in Company Advertising. (N.C. Gen. Stat. § 75-29)</i>   |
| <i>N.C.P.I.—Civil 813.40</i> | <i>Use of Term "Wholesale" in Company Name. (N.C. Gen. Stat. § 75-29)</i>  |
| <i>N.C.P.I.—Civil 813.41</i> | <i>Filing False Lien or Encumbrance Against a Public Officer or Employee</i>   |
| 2. Issue of Commerce.        |  |
| <i>N.C.P.I.—Civil 813.60</i> | <i>Introduction.</i>   |
| <i>N.C.P.I.—Civil 813.62</i> | <i>Unfair and Deceptive Methods of Competition and Unfair or Deceptive Acts or Practices.</i>  |
| <i>N.C.P.I.—Civil 813.63</i> | <i>Representation of Winning a Prize, Representation of Eligibility to Win a Prize, Representation of Being Specially Selected, and Simulation of Checks and Invoices.</i> |
| 3. Issue of Proximate Cause. |  |
| <i>N.C.P.I.—Civil 813.70</i> | <i>Proximate Cause.</i>  |
| 4. Issue of Damages          |  |
| <i>N.C.P.I.—Civil 813.80</i> | <i>Damages.</i>  |

