

TRADE REGULATION--COMMERCE--REPRESENTATION OF WINNING A PRIZE,¹
REPRESENTATION OF ELIGIBILITY TO WIN A PRIZE,² REPRESENTATION OF
BEING SPECIALLY SELECTED,³ AND SIMULATION OF CHECKS AND
INVOICES.⁴

Note Well: Use this instruction only in connection
with:

N.C.P.I.--Civil 813.35 ("Representation of Winning a
Prize")

N.C.P.I.--Civil 813.36 ("Representation of Eligibility
to Win a Prize")

N.C.P.I.--Civil 813.37 ("Representation of Being
Specially Selected")

N.C.P.I.--Civil 813.38 ("Simulation of Checks and
Invoices")

The (state number) issue reads:

"Was the defendant engaged in commerce at the time of the
conduct complained of?"

You will answer this issue only if you have found in the
plaintiff's favor on the preceding [issue] [issues] of
[representation of winning a prize] [representation of
eligibility to win a prize] [representation of being specially

¹G.S. § 75-32.

²G.S. § 75-33.

³G.S. § 75-34.

⁴G.S. § 75-35.

TRADE REGULATION--COMMERCE--REPRESENTATION OF WINNING A PRIZE,
REPRESENTATION OF ELIGIBILITY TO WIN A PRIZE, REPRESENTATION OF
BEING SPECIALLY SELECTED, AND SIMULATION OF CHECKS AND INVOICES.
(Continued.)

selected] [simulation of checks and invoices].

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 was engaged in commerce at the time of the conduct complained of.

A person is "engaged in commerce" when he is engaged in a business activity.⁵

(A "business activity" is the way a business conducts its regular, day-to-day activities or affairs (such as the purchase and sale of goods), or whatever other activities the business regularly engages in and for which it is organized.⁶)

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 defendant was engaged in commerce at the time of the conduct complained of, 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.

⁵See G.S. § 75-1.1(b) and Johnson v. Insurance Co., 300 N.C. 247, 261-262, 266 S.E.2d 610, 619-20 (1980).

⁶HAJMM Co., 328 N.C. at 594, 403 S.E.2d at 493; Malone, 113 N.C. App. at 502, 439 S.E.2d at 194.