

TRADE REGULATION--VIOLATION--ISSUE OF UTILIZING THE WORD
"WHOLESALE" IN COMPANY OR FIRM NAME. G.S. 75-29.

The (*state number*) issue reads:

"Did the defendant unlawfully utilize in a commercial transaction a company or firm name which contained the word "wholesale"?"

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:

First, that the defendant engaged in a commercial transaction utilizing a company or firm name which contained the word "wholesale".

Second, that the defendant was not principally engaged in sales at wholesale. A wholesale sale is a sale of tangible personal property to a manufacturer, or registered or retail merchant, for the purpose of resale. A wholesale sale does not include a sale of tangible personal property to users or consumers not for resale. Now, members of the jury, in determining whether (*identify corporation or firm making sales*) engaged principally in sales at wholesale, you must consider the following types of transactions as sales at wholesale: (*Here list the types of transactions at issue which would constitute wholesale sales: i.e.,*

(1) All sales to employees of defendant;

(2) All sales to organizations subject to refunds pursuant to G.S. § 105-164.14;

(3) All exempt sales pursuant to G.S. § 105-164.13; and,

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(4) All sales of merchandise for delivery by the seller to the purchaser at a location other than the seller's place of business.)

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 unlawfully engaged in a commercial transaction utilizing a company or firm name which contained the word "wholesale," 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.