

N.C.P.I.-Civil. 813.36  
TRADE REGULATION - VIOLATION - ISSUE OF REPRESENTATION OF  
ELIGIBILITY TO WIN A PRIZE.  
GENERAL CIVIL VOLUME  
MAY 1995  
N.C. Gen. Stat. § 75-33  
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813.36 TRADE REGULATION - VIOLATION - ISSUE OF REPRESENTATION  
OF ELIGIBILITY TO WIN A PRIZE.

The (*state number*) issue reads:

"Did the defendant unlawfully represent to the plaintiff that *he* may win or was eligible to win a prize?"

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, three things:

First, that the defendant represented to the plaintiff that *he* may win or was eligible to win a prize. A "representation" is any statement that would lead a reasonable person to believe that *he* may win or was eligible to win a prize (including, but not limited to, "congratulations, you may win" or "you are a finalist").

Second, that the defendant made this representation in connection with the [sale] [lease] [solicitation for sale] [solicitation for lease] of a [good] [property] [service].

Third, that the defendant made the representation without clearly disclosing (one or both of the following):

[on whose behalf the contest or promotion is conducted]

[all material conditions which a participant must meet].

Fourth, that the defendant failed to disclose clearly and prominently immediately adjacent to the description of the item or prize to which it relates one or more of the following:

[the actual retail value of each prize]<sup>1</sup>

[the actual number of each prize to be awarded]

[the odds of winning each prize].

A disclosure is made "clearly and prominently" when it is written or otherwise communicated in a way that a reasonable person under the same or similar circumstances would notice and understand it.<sup>2</sup>

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 represented to the plaintiff that *he* may win or was eligible to win a prize, 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.

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1. If there is an issue of fact as to the "actual retail value" of a prize, this part of the instruction may be supplemented as follows: "The 'actual retail value' of a prize means the price at which substantial sales of the item which constitutes the prize were made in the area within the 90 days prior to the making of the representation, or if no substantial sales were made, the actual cost of the prize to the person conducting the [sale] [lease] [solicitation for sale] [solicitation for lease]."

2. *Cf.*, N.C. Gen. Stat. § 25-1-201(10).