

N.C.P.I.-Civil. 813.63

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.  
GENERAL CIVIL VOLUME  
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813.63 TRADE REGULATION - COMMERCE - REPRESENTATION OF WINNING A PRIZE,<sup>1</sup> REPRESENTATION OF ELIGIBILITY TO WIN A PRIZE,<sup>2</sup> REPRESENTATION OF BEING SPECIALLY SELECTED,<sup>3</sup> AND SIMULATION OF CHECKS AND INVOICES.<sup>4</sup>

*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 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.<sup>5</sup>

(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.<sup>6</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 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.

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1. N.C. Gen. Stat. § 75-32.

2. N.C. Gen. Stat. § 75-33.

3. N.C. Gen. Stat. § 75-34.

4. N.C. Gen. Stat. § 75-35.

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

6. *HAJMM 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.