**10.8 Trademarks – False Advertising**

[Name of plaintiff] claims that [name of defendant] is liable for false advertising. To prove [his/her/its] claim, [name of plaintiff] must prove the following facts by a preponderance of the evidence:

**•** [Name of defendant]’s advertisements were false or misleading;

**•** [Name of defendant]’s advertisements deceived, or had the capacity to deceive, consumers;

**•** The deception had a material effect on purchasing decisions;

**•** The misrepresentation affected interstate commerce; and

**•** [Name of plaintiff] has been, or is likely to be, injured as a result of the false advertising.

There are two ways in which [name of defendant]’s advertisement may be false or misleading: it may be literally false, or it may be literally true but misleading.

Additionally, [name of plaintiff] must prove the materiality of [name of defendant]’s advertising by showing that [name of defendant]’s deception is likely to influence consumers’ purchasing decisions.

**False Advertising**

**Special Interrogatories to the Jury**

We, the jury, find by a preponderance of the evidence that:

[Name of defendant]’s advertising is false or misleading.

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “Yes,” then go to Question No. 2. If your answer is “No,” then your foreperson should sign and date the last page of this verdict form.

[Name of defendant]’s advertising deceives, or has the capacity to deceive, customers.

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “Yes,” then go to Question No. 3. If your answer is “No,” then your foreperson should sign and date the last page of this verdict form.

[Name of defendant]’s deception has a material effect on the customer’s purchasing decisions.

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “Yes,” then go to Question No. 4. If your answer is “No,” then your foreperson should sign and date the last page of this verdict form.

The product or service misrepresented by [name of defendant] affects or involves interstate commerce.

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “Yes,” then go to the special interrogatories on Defenses and Remedies in either the jury charges for Infringement of Registered Trademark or Infringement of an Unregistered Trademark. If your answer is “No,” then your foreperson should sign and date the last page of this verdict form.

So Say We All.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Foreperson’s Signature

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_