**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. If an advertisement is literally false, then it is presumed to deceive, or to have the capacity to deceive, consumers, and [name of plaintiff] need not prove that deception.

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**

**Do you 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.

**Trademarks—Contributory False Advertising**

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

* The other party engaged in false advertising; and
* [Name of defendant] contributed to the other party’s false advertising either by knowingly inducing or causing the false advertising, or by materially participating in it.

———.———

Contributory False Advertising

**SPECIAL INTERROGATORIES TO THE JURY**

**Do you find by a preponderance of the evidence that:**

1.         [Name of other party] engaged in false advertising?

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.

2. [Name of the defendant] intended to participate in or actually knew about the false advertising?

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.

3.        [Name of defendant] actively and materially contributed to the other party’s false advertising either by inducing or causing the conduct, or in some other way working to bring it about?

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

If your answer is “Yes,” then go to the special interrogatories on Remedies in either the jury charges for Infringement of Registered Trademark, Infringement of an Unregistered Trademark, or False Advertising. 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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_