



*Nguyen v. Jayceon Taylor, et. al.* 219 N.C. app 1, (2012) stands in support and on all fours with the cause of action asserted herein. Justice Calabria stated as follows: “ North Carolina recognizes a claim for invasion of privacy by means of “ appropriation, for the Defendants advantage, of Plaintiff’s name or likeness” *Renwick v. News and Observer Publishing Company*, 310 N.C. 312, 322,312 S.E. 2<sup>nd</sup> 405, 411 (1984).

In the *Nguyen* case cited above the Plaintiffs who are officers of the Greensboro Police Department arrested the Defendant Taylor for criminal trespass among other charges. An individual in Taylor’s entourage recorded the arrest. Thereafter, the defendant released a DVD and began an internet marketing service of his arrest. The Plaintiffs filed a complaint against Taylor and others including his publishing company among others for dissemination in the appropriation of the Plaintiffs likeness for commercial use. The Court went on to hold that his principal of appropriation for the Defendants advantage of the Plaintiffs likeness was a new field in legal juris prudence when the Court first addressed *Flake v. Greensboro News Company*, 212. N.C. 780, 195 S.E. 55 (1938). The cause of action asserted by the Defendant has developed as a result of the various decisions by our Courts over the last almost 50 years. As technology has developed the use of invasion of privacy claims, where if, a Defendant publishes an appropriation of a Plaintiff without their consent for money or advantage, the Plaintiff has such cause of action available in North Carolina.

North Carolina Rules of Pattern of Jury Instructions 800.75 sets forth the elements that must be found by the preponderance of the evidence by the trier of fact.

“did the Defendant appropriate the likeness of the Plaintiff for the Defendants own commercial use and benefit without the Plaintiff’s consent.

- (1) That the Defendant appropriated the Plaintiffs likeness for the Defendants own commercial use and benefit and
- (2) That the Plaintiff did not consent to the Defendants appropriation of her likeness.”

This is the cause of action set forth in the complaint filed in this matter in that the exhibits attached to the complaint set forth the locations of the commercial activity the number of Kebbie Buttons offered at the Haywood County Fair, the gun show where the Defendants attended with their Kebbie Buttons and that Eddie Cabe almost sold out of the Kebbie Buttons at the Hillbilly Jam in Maggie Valley to support the Plaintiffs allegation of her likeness being appropriated for Defendants and each of their own commercial use and benefit with Plaintiff’s consent.,

While the Defendants have attempted to couch this in a First Amendment issue, it is clear that this cause of action is not grounded in libel or slander and has no connection to any advertising purposes of any defamation of claim none of the Defendants have been sued for defamation or slander.

Respectfully submitted this the 30<sup>th</sup> day of March, 2018.

McLEAN LAW FIRM, P.A.



---

Russell L. McLean III  
P.O. Box 4  
Waynesville, NC 28786  
Phone: (828) 452-2896  
Fax: (828) 356-6517

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Memorandum by placing a copy of same in the U.S. mail, properly addressed and postage prepaid upon the following:

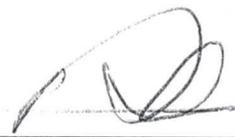
C. Amanda Martin  
Attorneys for Defendants  
1101 Haynes Street, Suite, 100  
Raleigh, NC 27604

Arnold E. Cabe  
13 Haven Place  
Canton, NC 28716

Haywood Republican Alliance  
Richard Owen West  
561 Westwood Circle  
Waynesville, NC 28786

Jeremy Davis  
127 Rebel Ridge Road  
Canton, NC 28716

This the 29<sup>th</sup> day of March, 2018.



---

Russell L. McLean, III  
P.O. Box 4  
Waynesville, NC 28786  
Phone: (828) 452-2896  
Fax: (828) 356-6517