DC Lawsuit Against the Commanders Signals Expansion of Consumer Protection Laws

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Last week, Attorney General Karl Racine announced a new lawsuit against the Washington Commanders, team owner Dan Snyder, the NFL, and NFL Commissioner Roger Goodell for "colluding to deceive DC residents about an investigation into toxic workplace culture and allegations of sexual assault to maintain a strong fanbase and increase profits."

The lawsuit claims that "for decades, Snyder has cultivated an environment within the Team that glorifies sexual harassment and punishes victims for speaking out." Throughout the 45-page complaint, the AG details examples of a hostile work environment which, if true, are reprehensible. But why are you reading about a lawsuit that focuses on a hostile work environment on a blog that focuses on advertising law?

The AG argues that DC's Consumer Protection Procedures Act (or "CPPA") "establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia," that the defendants are "merchants" under the law, and that they provide "consumer goods and services" to DC residents. Nothing too surprising there.

The AG then argues that the defendants engaged in "practices that have a tendency to mislead consumers," such as by making explicit and implied misrepresentations *about an investigation* into the Commander's workplace culture, failing to disclose material facts *related to that investigation*, and "using ambiguity with respect to material facts" *related to that investigation*.

It's common to see AG investigations which relate to statements "from merchants *about* consumer goods and services" offered to consumers. The statements in this case, though, are arguably not about the goods and services themselves. For example, they are not about games, tickets, or other products that consumers buy. Instead, they are about the company's workplace.

The AG seems to connect the two by stating that in order to sell consumer goods and services, the defendants need "to inspire public confidence and fan loyalty." This can be slippery slope. Arguably, all companies need to inspire confidence and loyalty in order to sell things. Does that mean that any statement designed to yield such a result is now fair game under consumer protection laws?

It's worth noting that the success of these types of arguments by other states is likely to vary, as different state unfair and deceptive trade practice laws require varying degrees of a nexus between underlying trade or commerce and the deceptive act or practice. It remains to be seen if the DC AG

will be successful in making this link, but this is certainly a sign of the continued effort by State Attorneys General to push the boundaries of their consumer protection laws.

If the court agrees with this broad construction, this case could have implications for companies in more mundane circumstances. We'll continue to watch this case as it develops.