

Federal Court Rejects Coupon Settlement Under CAFA

March 9, 2010

A federal court in California recently sided with twenty-six state attorneys general and several objectors in rejecting a proposed class action settlement that called for Honda to provide over 175,000 Honda Civic Hybrid owners a coupon worth no more than \$1,000 toward purchasing a new Honda vehicle. In *True v. American Honda Motor Co.*, No. EDCV07-0287-VAP(OPX) (C.D. Cal. Feb. 26, 2010), the plaintiffs alleged that Honda used false and misleading advertisements regarding the fuel efficiency of its Honda Civic Hybrid to induce customers to pay \$2,500 more for the Hybrid than for the comparably equipped standard-engine Honda Civic, even though the Hybrid gets only marginally better gas mileage. Under the proposed settlement, class members were to receive a DVD with tips on how to improve their gas mileage, an opportunity to receive a rebate on the future purchase of another Honda, and, for less than two percent of the class, an opportunity to make a claim for \$100. The settlement also provided that Honda would not oppose class counsel's motion for nearly \$3 million in attorneys' fees.

In an order entered on February 26, 2010, the court denied final approval of the settlement. Specifically, the court held that the proposed settlement's award of a cash payment to only a select group of the class "creates the most significant obstacle to approval" of the settlement, and that the members of this sub-group were the only class members who would receive a true cash award in the settlement.

As the court explained, the Class Action Fairness Act ("CAFA") requires federal judges to apply heightened scrutiny to a coupon settlement to determine whether the settlement is "fair, reasonable, and adequate for class members." The attorneys general argued in their amici briefs that coupon settlements are inherently unfair because they require class members to do business once again with the company they sued in their lawsuit. While the *True* court held that not all coupon settlements are unfair, it found that in this instance, the proposed settlement failed in many respects, including that the rebate program was a coupon settlement that would have an extremely low redemption rate and "far less" value than plaintiffs suggested, and the vast majority of the class would receive "nothing more than a DVD of little value."

Finally, the court also held that, in light of the low value of the settlement, an award of almost three million dollars in attorneys' fees "would be unconscionable."

Companies facing potential consumer class actions should note that attorneys general are reviewing the notices that settling defendants are required to send under CAFA, especially for settlements involving coupons.