

State Attorneys General Hold Ford Accountable for Advertising Claims

Paul L. Singer, Beth Bolen Chun

May 31, 2022

Last week, 40 State Attorneys General entered into a settlement with Ford Motor Company related to its substantiation of payload capacity claims on certain Super Duty pickup trucks and the fuel economy of certain C-Max hybrids. Ford is paying \$19 million to the participating States, plus \$200,000 in costs. The settlement itself is pretty straightforward – there are only two substantive requirements related to Ford’s future conduct. Going forward, Ford cannot make false or misleading advertising claims regarding the estimated fuel economy or payload capacity of new motor vehicles.

Although the settlement, which took the form of an Assurance of Voluntary Compliance (or “AVC”), is light on details, there is a lot to unpack from the underlying AG allegations. The C-Max vehicles in question were previously subject to multiple class action lawsuits alleging overstatements on fuel efficiency, and Ford previously provided payments to consumers when they acknowledged the overstated rating back in 2013. As for the Super Duty vehicles, the AGs alleged that the payload claims, which earned Ford a “Best-in-Class” status, were overstated because they were based on a hypothetical configuration that required the removal of several standard items such as a spare wheel, tire and jack, radio, and center console (a configuration only available to fleet customers).

So what are the broader lessons we can take away from these settlements?

- **Claims must be substantiated – and not just technically.** Ford arguably could support both its fuel economy claims (through historic practices of working with the EPA on generating ratings for different-but-related models), and its payload claims (through the configuration described above), but that wasn’t enough for the AGs. Rather, the focus was what the “real world” experience for a consumer would be – absent any other disclosure, the AGs are going to focus on what a typical consumer would expect.
- **Attorneys General will pursue cases even without restitution.** The \$19 million payment can be used by the AGs for “any lawful purpose” – but cannot be characterized as a fine, penalty, or forfeiture. History tells us that while some offices may use their portion of the payment to repay consumers, most will use it for future consumer protection enforcement/education or have it revert to their general fund. Even though AGs make recovery for consumers a priority, in cases like this where identifying purchasers may be challenging and some consumers already received payment, the AGs’ priorities may shift.
- **Attorneys General are especially focused on issues that impact consumers’ pocketbooks.** While AGs focus their consumer protection efforts in a variety of areas, the recent wave on inflation has kept them specifically focused on matters that impact consumers’ out-of-pocket costs. Many of the press releases focused on rising gas prices and the significant

impact fuel economy has on consumer choice. Businesses should be especially sensitive to disclosures made regarding overall costs.



Please join us for [State Attorneys General 101](#), a webinar covering the basics of State AG consumer protection powers, what to expect if you find yourself a target of attorneys general investigation, how to look to state attorneys general to stop improper actions of competitors, and more. [RSVP here](#).