

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2015 OCT -2 PM 3: 55

CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY, ATTORNEY GENERAL,

Plaintiff,

v.

Civil Action No. 15-C-1833

Judge King

VOLKSWAGEN of AMERICA, INC., a New Jersey
corporation,

Defendant.

COMPLAINT FOR CONSUMER RESTITUTION,
CIVIL PENALTIES,
AND OTHER APPROPRIATE RELIEF

Plaintiff, the State of West Virginia ex rel. Patrick Morrissey, Attorney General ("the State" or "Attorney General"), files this Complaint asking the Court to permanently enjoin the above-named Defendant, Volkswagen Group of America, Inc. ("Volkswagen") from violating the West Virginia Consumer Credit and Protection Act ("WVCCPA"), W. Va. Code § 46A-1-101 *et seq.*, and other applicable consumer protection laws and regulations, and to enter a final order awarding the State all other appropriate relief as authorized by W. Va. Code § 46A-7-108.

I. PARTIES

1. The State, by and through the Attorney General, Patrick Morrissey, is authorized to bring this action pursuant to the Consumer Credit and Protection Act, W. Va. Code § 46A-1-101, et seq. (the "WVCCPA").

2. Defendant, Volkswagen Group of America, Inc., is a New Jersey corporation, and at all relevant times was doing business in the State of West Virginia by selling and distributing motor vehicles through a chain of distribution and dealers within West Virginia.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction to hear this matter pursuant to Article VIII, Section 6 of the West Virginia Constitution. W. Va. Code § 51-2-2, and W. Va. Code § 53-5-3.

4. Venue is proper in this court pursuant to W. Va. Code § 46A-7-114 and W. Va. Code § 56-1-1(a)(6).

III. BACKGROUND AND APPLICABLE LAW

5. Defendant Volkswagen is a wholly owned subsidiary of Volkswagen A.G., and is responsible for the U.S. operations of Volkswagen A.G.'s brands Volkswagen, Audi, Bentley, Bugatti, Lamborghini, and VW Credit, Inc.

6. Volkswagen is in the business of distributing, selling, and financing motor vehicles within the State of West Virginia.

7. The United States Government, through the Environmental Protection Agency ("EPA"), has passed and enforced laws designed to protect United States citizens from pollution and other significant risks to human health and the environment. Automobile manufacturers must abide by these U.S. laws and must adhere to EPA rules and regulations.

8. The Clean Air Act (“CAA”) is a comprehensive federal law that regulates different types of air emissions.

9. The CAA was passed to “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1)-(2).

10. The CAA requires, among other things, that vehicles sold in the United States be covered by an EPA issued certificate of conformity, which certifies that the vehicles meet applicable emissions standards for air pollution.

11. In 2008, Volkswagen introduced a new line of “clean diesel” vehicles with Turbo-charged Direct Injection (“TDI”) engines.

12. Volkswagen advertised the TDI clean diesel vehicles as being environmentally friendly, claiming them to be the “most clean diesel vehicles in the U.S.”

13. In May of 2014, the Center for Alternative Fuels, Engines & Emissions (“CAFEE”) at West Virginia University released a study on the in-use emissions of light duty diesel vehicles in the United States. The study conducted by CAFEE produced evidence that Volkswagen was cheating U.S. emissions testing on at least two Volkswagen TDI clean diesel vehicles. CAFEE’s results were later corroborated by the California Air Resources Board and the U.S. Environmental Protection Agency.

14. On September 18, 2015, based at least in part upon a study performed at West Virginia University, the EPA issued a Notice of Violation (“NOV”) to Volkswagen AG, Audi AG, and Volkswagen Group of America, Inc., for failure to comply with the Clean Air Act regulations in 482,000 diesel vehicles sold in the United States since 2008.

15. As suggested by the CAFEE study, and as outlined in the EPA NOV, Volkswagen purposely engineered certain Volkswagen and Audi diesel vehicles to cheat U.S. emissions tests by equipping them with software that detects when the vehicles are undergoing emissions testing. The software used by Volkswagen allows emissions controls to operate normally when a vehicle is undergoing emissions testing, but suppresses emissions controls to increase performance and fuel economy when vehicles are operating normally. By suppressing the emissions controls during normal operation, the software allows Volkswagen and Audi TDI clean diesel vehicles to emit up to 40 times the allowable levels of certain pollutants, including nitrogen oxides (“NOx”).

16. The CAA defines this type of software as a “defeat device.”

17. It is a violation of the CAA to manufacture, sell, or install a defeat device in order to bypass or render inoperative any emission control device.

18. Vehicles equipped with defeat devices will not be issued a certificate of conformity by the EPA, and cannot, therefore, be sold in the United States.

19. According to the EPA NOV, Volkswagen installed its “defeat device” in at least the following diesel models (the “Affected Vehicles”): 2009-2015 VW Jetta; 2009-2015 VW Beetle; 2009-2015 VW Golf; 2012-2015 VW Passat; and 2009-2015 Audi A3. Discovery may reveal that additional vehicle models and model years are properly included as Affected Vehicles.

20. Volkswagen’s former CEO, Martin Winterkorn, publicly admitted Volkswagen installed the defeat devices in its diesel vehicles in order to bypass or render inoperative any emission control device. Winterkorn resigned shortly after disclosing this conduct by Volkswagen.

21. Beginning in 2008, in order to entice consumers to purchase their TDI clean diesel vehicles, Volkswagen advertised the TDI line of vehicles as environmentally friendly, fuel efficient, and high performance. In fact, Volkswagen marketed the TDI clean diesel vehicles as the “most clean diesel vehicles in the U.S.,” and advertised that the engines were EPA certified in all 50 states.

22. West Virginia consumers responded to Volkswagen’s advertising by purchasing TDI clean diesel models, expecting that their vehicles would be environmentally friendly, fuel efficient, and high performance, as advertised.

23. The TDI clean diesel vehicles were sold at a premium above the cost of standard gasoline engines. Depending on the make and options chosen by consumers, the premium was between \$1,000 and \$6,855.

24. However, those West Virginia consumers who purchased Volkswagen and Audi TDI clean diesel vehicles did not receive vehicles that would perform as represented to them by Volkswagen. Specifically, the TDI clean diesel vehicles are not environmentally friendly, and gain performance, fuel efficiency, and EPA certification only by circumventing required environmental controls.

25. The EPA has ordered Volkswagen to recall the Affected Vehicles and repair them so that they comply with EPA emissions requirements at all times during normal operation.

26. Volkswagen will not be able to comply with the EPA order to make the Affected Vehicles comply with emissions standards without substantially degrading their performance and fuel efficiency to a level below that advertised by Volkswagen, and below that experienced by consumers prior to, or when they purchased their vehicles.

27. Should the Affected Vehicles be repaired to make them comply with EPA emissions requirements, the reduced performance and fuel efficiency, together with a stigmatization of the vehicles, will cause a diminution in the value of every Affected Vehicle.

28. According to the West Virginia Division of Motor Vehicles (“DMV”), there are currently 2,684 diesel Volkswagen vehicles from model years 2009 to 2015 currently registered in this state. It is likely that discovery will reveal that the number of Affected Vehicles sold to West Virginia consumers is greater than the number currently registered with the DMV.

29. At all times pertinent to the case at bar, Volkswagen engaged in the sale and financing of motor vehicles to West Virginia Consumers. Therefore, Volkswagen’s business practices are subject to the provisions set forth in the WVCCPA, which is regulated by the Attorney General pursuant to W. Va. Code § 46A-7-101.

30. The WVCCPA prohibits, *inter alia*, a merchant of goods from engaging in unfair methods of competition and unfair or deceptive acts or practices in its advertising to and transactions with a consumer. *See W. Va. Code § 46A-6-104.*

31. Volkswagen engaged in unfair methods of competition and unfair or deceptive acts or practices in violation of the WVCCPA, generally, and W. Va. Code § 46A-6-104, specifically.

FIRST CAUSE OF ACTION
(Certifications, Benefits and Characteristics Not as Promised
W.Va. Code § 46A-6-102(7) (B), (C), (E) and (G))

32. The State reasserts each and every allegation in Paragraphs 1 through 31 of the Complaint as if set forth fully herein.

33. Vehicles sold in the United States are required to have a certificate of conformity from the EPA.

34. Vehicles equipped with defeat devices will not be issued a certificate of conformity by the EPA, and cannot, therefore, be sold in the United States.

35. Nonetheless, Volkswagen equipped the affected TDI clean diesel vehicles with defeat devices in order to cheat the environmental standards required by the EPA and trick the EPA into issuing the required EPA certification.

36. By equipping its vehicles with defeat devices Volkswagen was able to artificially inflate the fuel efficiency, performance, and emissions data above a level possible if the vehicles were operating with the appropriate environmental controls.

37. Volkswagen then marketed the TDI clean diesel line of vehicles as EPA certified in all 50 states.

38. Further, Volkswagen marketed the TDI clean diesel line of vehicles as environmentally friendly, fuel efficient, and high performance when in fact, Volkswagen intentionally and deliberately placed defeat devices on the vehicles to allow the vehicles to pass emissions tests while producing illegal levels of pollutants during normal operation.

39. Volkswagen's claimed fuel efficiency and performance for the TDI clean diesel line of vehicles was misleading because it was only obtainable on vehicles operating with environmental controls intentionally and illegally turned off.

40. Volkswagen engaged in unfair or deceptive acts or practices in violation of the WVCCPA by representing that the TDI clean diesel line of vehicles were environmentally friendly, fuel efficient and high performance, when in fact, the vehicles did not have those

characteristics, benefits or qualities. W.Va. Code § 46A-6-104 as defined by W.Va. Code § 46A-6-102(7)(B), (C), (E) and (G).

SECOND CAUSE OF ACTION
(Advertised Services Not Delivered, W.Va. Code § 46A-6-104)

41. The State reasserts each and every allegation in Paragraphs 1 through 40 of the Complaint as if set forth fully herein.

42. Volkswagen advertised that it manufactures and sells environmentally friendly, clean, turbocharged diesel-powered motor vehicles to consumers in West Virginia.

43. Volkswagen advertised that its TDI clean diesel line of vehicles delivered 30 percent better fuel mileage, “significantly more torque” and were “more fun” to drive.

44. Volkswagen also advertised that its “clean” diesel engine had “cleaned up its act” and urged consumers to “find out how clean diesel technology impacts fuel efficiency and performance, while also being a more eco-conscious choice.”

45. Volkswagen’s advertisements misrepresented to consumers that the Affected Vehicles would be “eco-conscious,” and “clean” while delivering the fuel mileage and performance advertised. This advertising is unfair or deceptive as defined by the WVCCPA because the Affected Vehicles are not clean or eco-conscious since they violate federal pollution laws. W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A 6 102(7)(I) and (N).

46. Volkswagen’s advertising is unfair and deceptive, since it misrepresents the true fuel mileage and performance of the Affected Vehicles once the defeat devices are removed or disabled. Volkswagen failed to disclose the true fuel mileage and other performance characteristics of its TDI diesel line of vehicles. Volkswagen never intended to

sell the Affected Vehicles as advertised in violation of the WVCCPA. W.Va. Code § 46A-6-104 as defined by W.Va. Code § 46A-6-102(7)(I) and (N).

**THIRD CAUSE OF ACTION
(Volkswagen Cause Confusion and Misunderstanding
Through its Misrepresentations and Omissions,
W.Va. Code § 46A-6-102(7) (L) and (M))**

47. The State reasserts each and every allegation in Paragraphs 1 through 46 of the Complaint as if set forth fully herein.

48. Consumers were confused and misled by Volkswagen's advertising.

49. When consumers saw advertising for Volkswagen's TDI diesel line of vehicles, they properly expected to purchase Affected Vehicles that were environmentally friendly and eco-conscious while delivering the performance and fuel economy advertised.

50. Consumers never expected to purchase an Affected Vehicle that was environmentally unfriendly, and that polluted the atmosphere in violation of federal laws. Volkswagen's unfair and deceptive conduct caused confusion and misunderstanding in violation of the WVCCPA. W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A-6-102(7)(L).

51. Volkswagen failed to disclose that its TDI line of vehicles were not in compliance with and violated federal laws until it was caught by regulators. Volkswagen intended for consumers to rely on its omissions so that it could sell its unlawfully polluting TDI line of vehicles in violation of the WVCCPA. W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A-6-102(7)(M).

FOURTH CAUSE OF ACTION
(Excess Fees Violations, W. Va. Code §§ 46A-7-111)

52. The State reasserts each and every allegation in Paragraphs 1 through 51 of the Complaint as if set forth fully herein.

53. Volkswagen charged and collected excess money from West Virginia consumers for Affected Vehicles that cannot meet the advertised specifications without violating federal law.

54. Volkswagen engaged in unfair or deceptive acts or practices by charging and collecting more money than justified for its TDI line of vehicles due to its deceptive and misleading advertising in violation of W. Va. Code § 46A-7-111 and W. Va. Code § 46A-6-104. As such, Volkswagen is subject to civil penalties up to ten times the excess charge as permitted by W. Va. Code § 46A-7-111(1).

PRAYER FOR RELIEF

WHEREFORE, The State of West Virginia requests that this Court:

1. Enter an Order permanently enjoining and restraining Volkswagen from engaging in unfair or deceptive acts or practices in violation of W. Va. Code §§ 46A-6-101 and 104 in general and, specifically, from engaging in unfair or deceptive acts or practices in violation of W. Va. Code § 46A-6-102(7), (B), (C), (E), (G), (I), (L) and (M);

2. Enter an Order permanently enjoining and restraining Volkswagen from continuing to use unfair or deceptive terms in its advertising of TDI line of vehicles in violation of W. Va. Code §§ 46A-6-104;

3. Enter an Order compelling Volkswagen to prominently disclose in its advertising the true performance specifications of its TDI line of vehicles when they are in compliance with federal laws;

4. Enter judgment against Volkswagen and in favor of the State, ordering it to pay appropriate restitution to West Virginia consumers for all money paid to Volkswagen for Affected Vehicles, including, but not limited to, full refunds of the premium West Virginia consumers paid for their TDI clean diesel vehicles above comparable gasoline engine models, for the diminution in value of the Affected Vehicles suffered by West Virginia consumers, and for increased fuel and maintenance costs reasonably expected to be incurred by West Virginia consumers as a result of the decrease in performance following any repair of these issues by Volkswagen;

5 Enter judgment against Volkswagen and order it to refund all excess charges that it collected from West Virginia consumers and for civil penalties in an amount of ten times the excess charges collected from West Virginia consumers pursuant to W. Va. Code § 46A-7-111;

6. Enter judgment against and order Volkswagen to pay to the State of West Virginia all its attorneys' fees, court costs, investigation costs, and all other costs associated with the investigation and maintenance and prosecution of this action;

7. Enter judgment against and order Volkswagen to pay a civil penalty in the amount of Five Thousand Dollars (\$5,000.00) for each and every willful and repeated violation of chapter 46A of the West Virginia Code that it committed, as provided in W. Va. Code § 46A 7-111(2);


8. Enter an Order granting the State and its citizens all equitable relief available, including, but not limited to, restitution and disgorgement; and,

9. Grant such other and further relief as the Court deems just and appropriate.

Respectfully submitted:

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Attorney General

By Counsel



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