BRESSLER, AMERY & ROSS

A PROFESSIONAL CORPORATION

BUSINESS LITIGATION ALERT

MARCH 2011

Caveat Venditor - In New Jersey, It's Seller Beware When Displaying Manufacturer Warranties

The New Jersey Appellate Division issued a recent opinion in *Robert E. Smith v. Vanguard Dealer Services, LLC, et al.*, reversing the trial court's dismissal of a consumer's claim against a car dealership under the Truth-in-Consumer-Contract, Warranty, and Notice Act (TCCWNA), N.J.S.A. 56:12-14 to -18. The TCCWNA prohibits a seller from offering or entering into certain contracts or giving or displaying certain written consumer warranties, notices or signs which are in violation of the rights of consumers. The court in *Smith v. Vanguard* held that the consumer's complaint stated a TCCWNA claim because in the course of its business, the dealership displayed a manufacturer's warranty, which presumably violated federal law.

The consumer, Smith, alleged that the dealership displayed a manufacturer's warranty for Royal Etch Guard, which is a "plan that includes an alpha numeric etching on the car's windows and a warranty for a buyer who pays the fee to register the etching." Smith claimed that the warranty violated federally prohibited tying arrangements.

In its analysis, the court assumed, without deciding, that the warranty violated an established consumer right. Thus, the issue on appeal was whether the dealership "displayed" the warranty "in the course of [its] business" under the TCCWNA. The court held that any seller who presents a warranty for a buyer's review, consideration and purchase, while making a sale of the product, is exposed to liability under the plain language of the TCCWNA. Damages are not needed – instead the TCCWNA imposes a civil fine of not less than $100, actual damages or both, plus counsel fees.

With certain exceptions, all businesses that sell goods or services should be aware of their potential exposure to TCCWNA claims by the offering, entering, giving or displaying a third-party's warranty when that warranty violates established state or federal law. While the court noted that the dealership went further than merely displaying the warranty by lending assistance to the transaction, it found that the dealership's display of the warranty was the only affirmative act necessary for a consumer to state a claim under the TCCWNA. ■

Employees Must Qualify Representations To Customers As Estimates – If Not, Employers Face Potential Consumer Fraud Act Liability

In a recent New Jersey Appellate Division decision, the court in *Rose E. Reaves v. American Honda Motor Co., Inc., et al.*, reversed the trial court's grant of summary judgment in favor of a car dealership and against a consumer for its claim under the New Jersey Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -20. The issue before the Court was whether a sales person misrepresented information contained in a car's "Monroney Sticker" when he did not qualify that information as an estimate at the time of sale.

The consumer, Reaves, alleged that the dealership violated the CFA and other laws when her car did not operate at a represented fuel consumption rate. The car sticker, or "Monroney sticker",

displayed a fuel economy estimate of between 20 - 28 mpg for city driving and 28 - 40 mpg for highway driving. In making the sale, the sales person made a representation that the car had a gas mileage of 26 mpg for city driving and 34 mpg for highway driving. According to Reaves, the sales person did not say that these were estimates.

In its analysis of other claims, the court recognized that federal law governed the fuel economy information stated in the Monroney sticker and preempts state law claims based upon such information. Nevertheless, the court held that evidence of a sales person's mere repetition of that information, without the caveat of it being an "estimate", is enough to establish a jury question of whether the dealership's employee made a misrepresentation in violation of the CFA.

Businesses that sell certain goods or services should be aware of their exposure to potential CFA claims through employees' statements made in discussions with consumers. As demonstrated by *Reaves*, the CFA is an unforgiving statute and may be applied even when the statements made are seemingly harmless and in conformity with information provided to the consumer through other sources. Further, the CFA does not require a plaintiff to prove another's knowledge of the falsity of the statement or that consumer's reliance upon the statement. ■

For more information about any of the topics covered in this issue of the Business Litigation Alert, please contact a Bressler, Amery & Ross Business Litigation Attorney:

Stephen R. Knox, Esq.
sknox@bressler.com
973.245.0684

Ronald J. Campione, Esq.
rcampione@bressler.com
973.245.0681

Gerd W. Stabbert, Jr., Esq.
gstabbert@bressler.com
973.660.4457

BRESSLER, AMERY & ROSS

A PROFESSIONAL CORPORATION

17 State Street
New York, NY 10004
212.425.9300

325 Columbia Turnpike
Florham Park, NJ 07932
973.514.1200

2801 SW 149th Avenue
Miramar, FL 33027
954.499.7979

www.bressler.com