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Litigation and Governmental Regulation in Response to Record Vehicle Prices in the Wake of COVID-19

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As COVID-19 has led to supply chain issues and labor shortages, Americans have seen the price of cars both new and used skyrocket to new heights. Used car prices are currently 43 percent higher than projected levels without COVID interference, leading consumers to pay $10,046 more per used vehicle than anticipated. The average price for a new vehicle reached $48,043 in June, marking the highest average for a new car in history. With inventory shrinking, many dealers have seized the opportunity to charge above sticker price and tack on hidden fees. This trend may be changing, however, as lawsuits and proposed Federal Trade Commission (FTC) regulations attempt to curb the allegedly "dishonest" actions.

Litigation

In May of 2021, a class action accusing General Motors (GM) of deceptive trade practices through its "destination charge" was filed in the Southern District of California. In *Romoff v. Gen. Motors LLC*, No. 21-CV-00938-WQH-BGS, 2021 WL 5741455 (S.D. Cal. Dec. 2, 2021), the plaintiffs alleged that GM violated California and New Jersey law by using the destination fees as a vehicle for profit, rather than a true reflection of the cost to deliver vehicles to customers. The district court in *Romoff* dismissed the case on January 19, 2022, stating that reasonable consumers would understand that profit is included in a destination fee, and the plaintiffs have since appealed to the Ninth Circuit. Although the success or failure of this appeal is unknown, it could give us a glimpse into a future with more litigation in response to ever-increasing add-on fees.

In April of 2022, the Maryland Attorney General reached a settlement with Koons Kia in which the dealership will be required to pay back $1 million to consumers for purported false advertising. Koons's allegedly deceptive practices included tacking on extra fees to the purchase of a vehicle by labeling them "freight charges" without including the charges in their advertised prices. The Maryland AG pursued these claims as a violation of the Consumer Protection Act, and may tee up similar claims across the United States by other state AG offices.

FTC Regulation

This litigation comes at a time when the FTC has begun to crack down on dealerships engaging in deceptive pricing schemes at the expense of the consumer. Just before the *Koons* settlement, the

FTC and the State of Illinois took action against Ed Napleton Automotive Group, slapping them with a $10 million fine in response to the multistate dealership company applying illegal “junk fees” to customer’s bills and discriminating against black consumers. Illegal actions taken by Napleton include hiding fees to unwanted add-ons in lengthy contracts without customers’ consent, lying to consumers about fees being mandatory or the add-ons being free, and charging black customers $190 more in interest and $99 more in add-ons than non-white customers. The unanimous FTC decision allocated $9.95 million of the $10 million dollar settlement to be used to provide monetary relief to affected consumers, and also required Napleton to establish a comprehensive fair lending program.

In the wake of the Napleton settlement, the FTC also recently proposed new rules to further protect consumers from an auto market perceived as predatory. 16 CFR Part 463, titled the Motor Vehicle Dealers Trade Regulation Rule would prohibit dealers from making “bait and switch” claims that lure in prospective buyers with deceptive advertisements, ban junk fraudulent fees for add-on products that do not provide a benefit to the customer, ban charging add-on fees without informing the consumer of the base price of the vehicle and receiving their express written consent, and require a full disclosure of the true offering price that the consumer would pay, as well as any optional add-ons and financing disclosures.

After a tumultuous two years in the automotive industry, experts project that the market will begin to stabilize in the coming months. However, that stabilization may not quell litigation from the FTC, state governments, and consumers who were overcharged since the vehicle inventory shortage began.

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