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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Hyundai Buyers Win Tentative Cert. In Mileage Ad Suit

By **Matthew Heller**

Law360, Los Angeles (November 29, 2012, 10:03 PM ET) -- A California federal judge on Thursday tentatively certified a class action accusing Hyundai Motor America of falsely advertising the fuel efficiency of Elantra and Sonata models, finding its marketing efforts were extensive enough that consumers could have relied on the ads to make purchasing decisions.

U.S. District Judge George H. Wu cited the launch of a television ad campaign for the Elantra during the NFL playoffs, the Super Bowl and the Academy Awards in ruling that the claims of four Hyundai buyers satisfy the materiality requirement for class actions. The consumers allege they bought either Elantras or Sonatas after seeing ads touting a fuel economy of 40 miles to the gallon on highways.

"Plaintiffs have exhaustively detailed the extensive scope of the challenged advertising," Judge Wu said in tentatively granting their motion for class certification, adding that "it appears almost impossible for Hyundai to dispute the extensive sweep of its marketing efforts as to the fuel efficiency of the Elantra and Sonata vehicles."

At a hearing on the motion, Hyundai's attorney Shon Morgan of Quinn Emanuel Urquhart & Sullivan LLP said that, according to one report, consumers view advertising as the least important thing they consider in buying a car.

"This isn't a purchase of an inexpensive consumer product where you just walk up, see what's on the label and buy it," he said. "When consumers buy a car, they do lots of investigation."

But Judge Wu suggested ads touting fuel efficiency would have an effect on the purchasing decision.

"It is readily apparent without a report that mileage is important," he said. "You wouldn't see every third party in a Prius if it wasn't for the situation that mileage is important."

The judge requested additional briefing before he makes a final decision. He also tentatively ruled that the class should be limited to California consumers because California's consumer protection laws cannot be applied to class members who bought their cars in other states.

"This case is probably going forward as a class in some way, shape or form," Judge Wu said.

A single Elantra buyer, Kehlle Espinosa, filed the original suit in January, claiming that, after driving her new car, she discovered the Elantra's real-world mileage was well below the advertised figure. In July, four additional class representatives were added to the case, three of whom had purchased Elantras, with the fourth being a Sonata buyer.

The complaint focuses on the way Hyundai advertised its fuel economy numbers, alleging the ads did not comply with regulations governing the display of the U.S. Environmental Protection Agency's mileage estimates for vehicles.

In November, Hyundai announced that after an EPA audit, it was voluntarily adjusting the fuel

economy ratings for about a third of its vehicles from the 2011-2013 model years, triggering a wave of new putative class actions.

Judge Wu said in his tentative ruling that the claims of Espinosa and her co-plaintiffs implicate the accuracy of the EPA estimate for their cars but he may forbid them "from proceeding on any theory that rests on the inaccuracy of an EPA estimate."

Carmakers are required to disclose EPA estimates under federal regulations, preempting state law claims involving the accuracy of estimates.

The plaintiffs are represented by Richard D. McCune, Elaine S. Kusel and Jae K. Kim of McCuneWright LLP.

Hyundai is represented by Shon Morgan, Valeria Roddy and Joseph R. Ashby of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Kehlre R. Espinosa v. Hyundai Motor America, case number 2:12-cv-00800, in the U.S. District Court for the Central District of California.

--Additional reporting by Zach Winnick. Editing by Andrew Park.

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