



15-SECOND ADVERTISING LAW ALERT

VAGUE FALSE ADVERTISING CHARGES ARE BEST DEFENDED IN FEDERAL COURT

Defendants that are faced with vague false advertising pleadings under state law are well advised to remove such actions into federal courts, if they can. The protective power of Federal Rule of Civil Procedure 9(b) in such cases was illustrated in a Ninth Circuit decision.*

BACKGROUND

Plaintiff filed a putative class action against Ford Motor Company in California court under that state's Consumer Legal Remedies Act, Unfair Competition Law, and Business and Professions Code.

The primary allegation was that Ford repackaged its used car inventory as Certified Pre-Owned vehicles, charged more for them, and falsely promoted them as being safer and more reliable than other used cars.

Ford removed the case on diversity grounds. Finding that Plaintiff's case was grounded in fraud, the federal court granted him several opportunities to amend his

complaint to comply with Rule 9(b)'s mandate to plead frauds with particularity.

Despite amending his complaint three times, Plaintiff's allegations remained general and his case was dismissed. He appealed, arguing that Rule 9(b) is contrary to California law; some claims were not based on fraud, and the complaint should have been interpreted under unfairness principles.

DECISION

The Ninth Circuit rejected all of Plaintiff's arguments and affirmed. It held, among other things, that Rule 9(b) applies in federal court when state law is at issue. The Rule requires a complaint sounding in fraud to aver the who, what, when, where, and how of alleged frauds.

The court found the purposes of Rule 9(b) were to assure adequate notice to defendants; deter filing of complaints as pretexts for discovery of wrongs; protect reputations, and avoid burdening the court, parties, and society without a factual basis.■

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* *Kearns v. Ford Motor Co*, No. 07-55835 (9th Cir. June 8, 2009).