PUTTING THE BRAKES ON NATIONAL CLASS ACTIONS: The Ninth Circuit Substantially Limits The California Supreme Court's *Tobacco II* Decision

Mazza v. American Honda Motor Company, Inc., *No. 09-55376* (9th Cir. Jan. 12, 2012).

The Ninth Circuit has vacated a lower court's decision certifying a nationwide class of drivers who allegedly purchased a special anti-collision braking system based on ads by Honda that overstated the system's benefits. In a divided decision, the majority held that California's rigorous consumer protection statutes cannot govern purchases made in other states. The majority also held that the "presumption of reliance" previously recognized by the California Supreme Court should not apply when some class members may never have seen the ads in dispute, and could not have relied on them when making their purchase decisions.

The named plaintiffs in *Mazza v. American Honda* were drivers of Acura brand vehicles who paid an extra $4,000 for cars equipped with Honda's anti-collision braking system. According to Honda's advertisements, the system was designed to first warn drivers of an impending collision and then automatically apply the brakes to lessen the impact. Plaintiffs alleged that Honda's ads not only exaggerated the system's capabilities, but also failed to disclose significant limitations such as the fact that the system shuts off in bad weather.

The district court ruled that because Honda is headquartered in California and its ads were created by an ad agency in California, California law should govern whether consumers made their purchases in California or not. On that basis, the district court certified a class of all consumers nationwide who purchased or leased an Acura with Honda's special braking system. On appeal, Honda argued that the district court's choice-of-law analysis was improper, and each consumer's claims should be decided under the laws in his home state. The Ninth Circuit agreed.

The Ninth Circuit recognized that consumer protection statutes often differ significantly from state to state. Some states, for example, require proof of intent and reliance, while others do not. Moreover, these differences reflect unique policy choices that states have made regarding the appropriate balance between protecting consumers and creating a climate hospitable to out-of-state businesses.

According to the Ninth Circuit, the district court's decision to apply California's unusually protective statutes to out-of-state class members effectively overrode other states' valid interests in promoting business:

> "Getting the optimal balance between protecting consumers and attracting foreign businesses, with resulting increase in commerce and jobs is not so much a policy decision committed to [a federal court] as it is a decision properly to be made by the legislatures and courts of each state. . . Each of our states has an interest in balancing the range of products and prices offered to consumers with the legal protections afforded to them."

In deference to other states' policy choices, the Ninth Circuit held that claims of non-California consumers must be adjudicated under the laws of their own states and, therefore, proceeding with a nationwide class under California law would be improper.

In a boon to advertisers, the Ninth Circuit did not stop at its decision to decertify the national class. The Ninth Circuit also held that a class restricted just to California purchasers could not be certified either because individual issues of whether class members saw and relied on Honda's allegedly false ads would predominate over issues common to the class.

In reaching that decision, the Ninth Circuit rejected the plaintiffs' arguments based on *In re Tobacco II Cases*, 46 Cal. 4th 298 (2009) – the California Supreme Court's landmark decision holding that a class action of smokers could proceed without individualized proof that each class member relied on ads that misstated the health risks of smoking. The Ninth Circuit held that the presumption of reliance applied in *Tobacco II* must be limited to the particular facts of that case.

Whereas the plaintiffs in *Tobacco II* challenged a sustained, extensive, and "decades long" ad campaign by cigarette makers, Honda's ads for its braking system included sporadic TV commercials, internet promotions, and in-store ads that ran for varying periods of time over the course of a few years. According to the Ninth Circuit, the more "limited scope" of Honda's ad campaign "makes it unreasonable to assume that all class members viewed it" and, therefore, reliance cannot be presumed.

The Ninth Circuit remanded the case to the district court to reconsider what class definition, if any, could be fashioned in light of its decision.

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The Ninth Circuit decision in *Mazza* is a very significant decision for advertisers, who live with the constant threat of abusive class actions. The decision casts serious doubt on the propriety of nationwide class actions. Moreover, it should deter lower courts from certifying class actions in most false advertising cases in which consumers were exposed to different advertisements and may have purchased the advertiser's product for reasons having nothing to do with any alleged deception. ◆

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