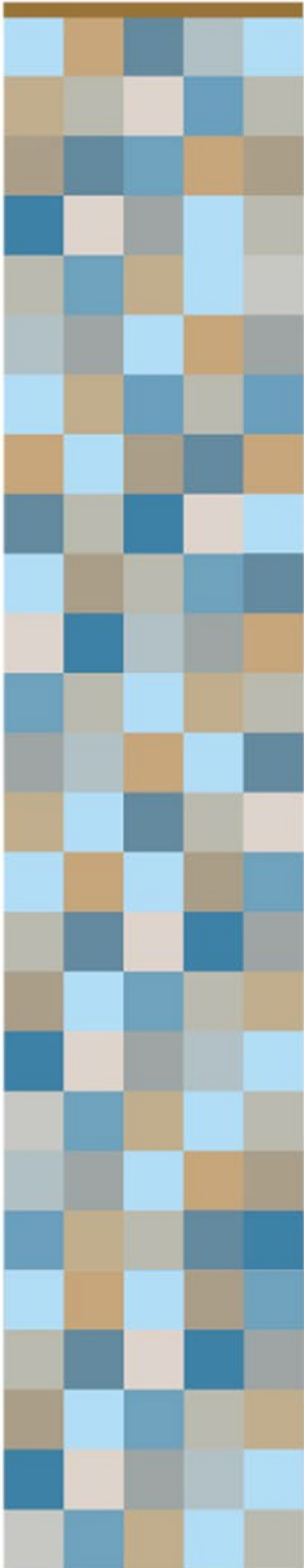


# ALERT



August 2024

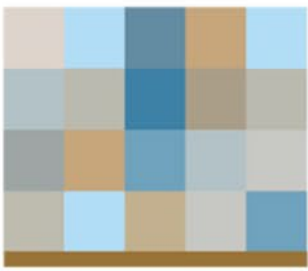
## CarShield's \$10 Million Lesson: A Tale of Deceptive Advertising

*By: Terese L. Arenth*

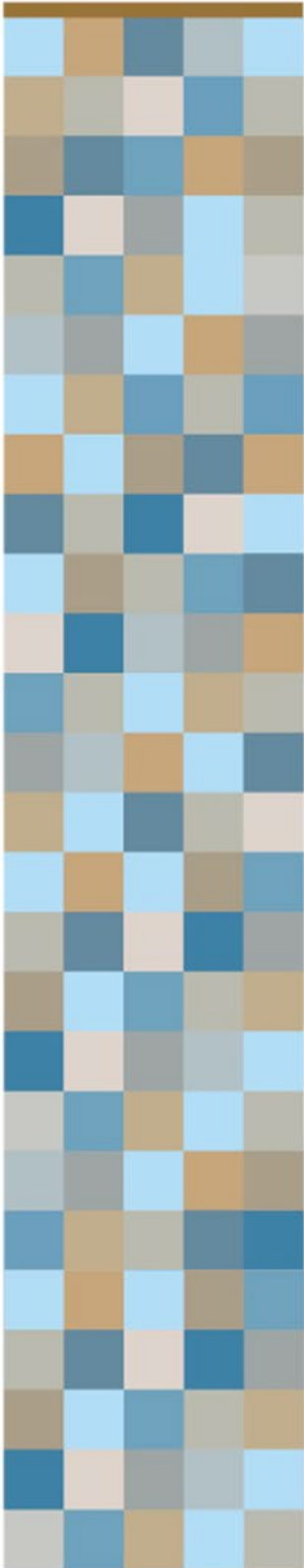
I was recently in the potential market for an extended car warranty. After a bit of research, I contacted CarShield to explore my options. I spoke with a representative who heartily congratulated me on qualifying for one of its premier service contracts, at a reasonable monthly rate. This service contract, I was told, would provide me full coverage for all sorts of necessary (and sometimes very expensive!) vehicle repairs and breakdowns, with a low deductible, a rental car and many more goodies.

Typical lawyer, I kept asking questions and pressing for more drilled down details of what constituted full coverage. Never breaking stride from its script, the CarShield representative dodged my questions and repeatedly pressured me for my credit card information, despite my repeatedly telling him that I was not yet prepared to hand over my credit card because the vehicle in question was coming off lease and I had not yet decided if I was going to become its proud owner. Why in the world would I prematurely commit to coverage for a vehicle I didn't even own? I was repeatedly assured that the contract covered all major parts and systems, yet they would not provide me with any written details of the coverage until after I signed up. Eventually, I wore him down and pulled out of him that "major" parts and systems did not include coverage for the engine and transmission. Say what?! At that point, I said thanks but no thanks. (Apparently thinking that persistence pays off, I received several follow up calls from CarShield, each time offering me an even "better" deal and coverage but, when pressed, still no coverage for engine or transmission repairs.)

Ironically, shortly thereafter on July 31<sup>st</sup>, the Federal Trade Commission (FTC) announced a proposed \$10 million settlement with CarShield and American Auto Shield (AAS) to settle FTC charges that CarShield's advertisements and telemarketing for its vehicle service contracts are deceptive and misleading. According to the [complaint](#), AAS determines coverage and eligibility criteria for each service contract, and is responsible for adjudicating and paying customers' claims, while CarShield creates the ads and manages marketing, although contractually AAS has significant say in the content. The FTC alleged that the defendants made misleading claims about what repairs were actually covered, deceptively represented that consumers could get repairs at the shop of their choice, used



# ALERT

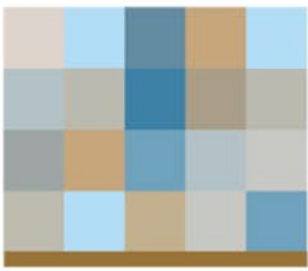


deceptive celebrity and consumer endorsements, and violated the Telemarketing Sales Rule.

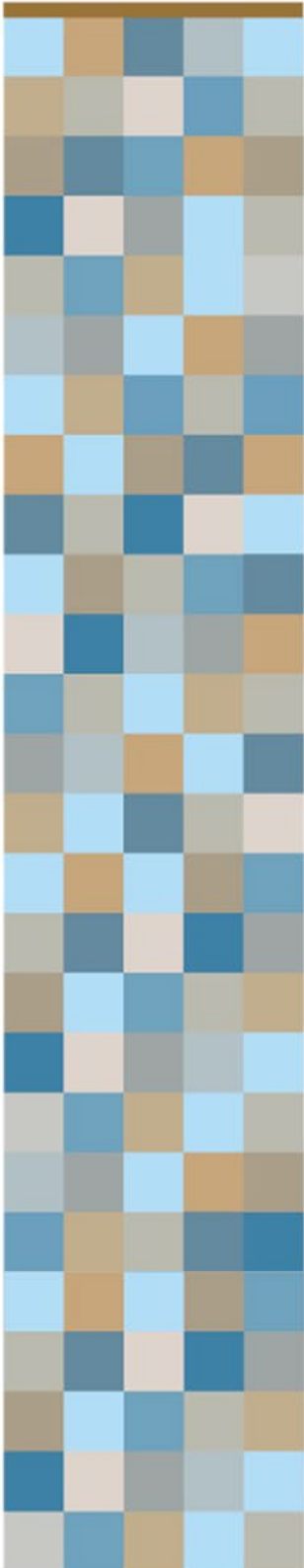
## **Deceptive and Misleading Claims**

According to the FTC's complaint, CarShield's ads and telemarketing conveyed that the vehicle service contracts protect consumers from unexpected repair costs after their manufacturer's warranty has expired, pitching "protection" and "peace of mind," while promising customers "you'll never pay for expensive car repairs again." One ad promised "no big bills," claiming, "If my car breaks down, I can count on CarShield to cover it for me." In addition, ads touted that "CarShield has plans that can help cover major parts and systems for out-of-warranty vehicles. So when they break down, you're not the one stuck with the bill." Among other things, the ads and telemarketing promote that consumers can use the repair facility of their choice and receive a rental car.

It is not until after a consumer has purchased a service contract, however, that they receive the actual contract, which is a dense 25-30 page document filled with numerous exclusions, terms and conditions that are not disclosed in CarShield's advertising or by its telemarketers. According to the FTC, it wasn't until many consumers' cars experienced a breakdown that they learned that CarShield delivered substantially less than what it had led them to believe. For example, many consumers could not use the repair facility of their choice (some consumers reported that their preferred mechanic or dealership was unwilling to work with CarShield/AAS because of prior bad experiences like nonpayment). After locating a facility that did accept their CarShield contract, many consumers then learned that their repairs would not be covered, as none of the service contracts sold by CarShield covered all repairs, or even all repairs to "covered" vehicle systems, such as the engine and transmission. (Sound familiar?). Rather, the contracts contain myriad exclusions, including exclusions of entire vehicle systems, exclusions of parts within "covered" vehicle systems, and exclusions for breakdowns that AAS determines were due to one or more of dozens of causes, in addition to containing numerous material terms and conditions. These exclusions, terms and conditions are not disclosed in CarShield's advertising or by its telemarketers, but they are routinely invoked to deny claims. Adding insult to injury, many consumers did not receive the promised rental car. AAS will approve a rental car only after it has authorized a repair claim, which often takes days or weeks after submission of a claim, and reimbursement is limited to a maximum number of days and cost per day, regardless of how long the repair takes and the actual cost of the rental car.



# ALERT



## **False Endorsements**

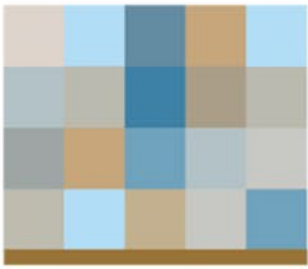
Compounding the claims against defendants, the FTC further alleged that CarShield promoted its service contracts by featuring endorsements by prominent professional athletes and celebrities – including Ice-T, Vivica A. Fox and Pete Alonso – who were represented to be “customers” or “real CarShield Customers.” In many cases, however, they were not customers or contract holders, and some who claimed to be actual users were nominal holders who had never actually used their service contract for any repairs. CarShield also used consumer endorsements to specifically tout how much money they saved with their service contract when, in fact, the consumer did not actually save the amount of money they claimed.

## **Stipulated Settlement Order**

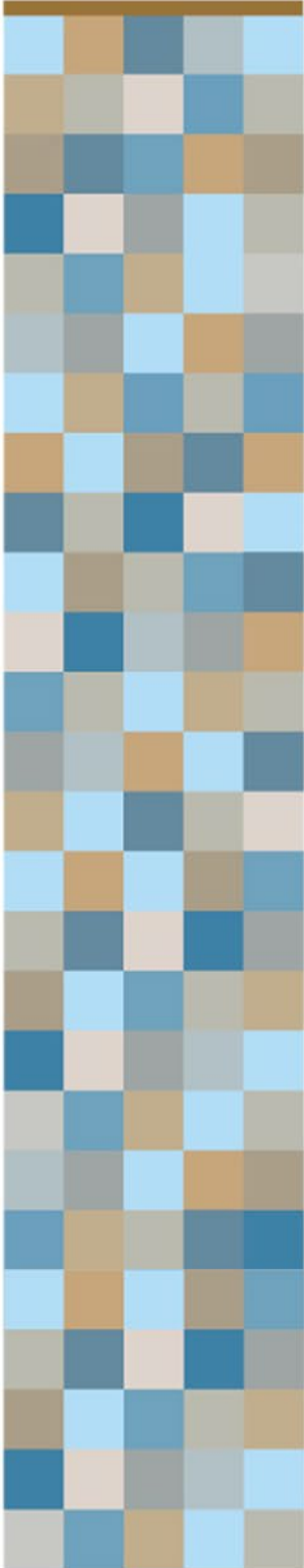
Aside from \$10 million for consumer redress, the FTC’s proposed settlement prohibits CarShield from making misrepresentations related to any goods or services, prohibits misrepresentations about endorsers’ experiences with a product or service, requires compliance with the Telemarketing Sales Rule and requires AAS to tell third-party marketers about the order and to monitor their advertising.

## **Key Takeaways**

The FTC’s action is a good reminder of basic marketing practices for legal compliance. Be upfront about material terms and conditions before a consumer makes a purchase. Companies should take heed and monitor customer complaints to assess and discontinue practices that may be causing confusion (something that CarShield apparently neglected to do despite ample notice and opportunity). Review your obligations under the Telemarketing Sales Rule, which applies to all outbound telemarketing calls (with some exceptions) and certain inbound calls, and mandates certain required disclosures and prohibits deceptive conduct. If using endorsements as a marketing tool, review and clear all claims, take note on whether you can substantiate any claims made and make sure that the claims are based on the endorser’s personal experience with your goods or services. (And in case you were wondering, I did buy the car and went with the dealer’s extended warranty option, not CarShield!).



# ALERT



**Terese L. Arenth** is a Partner and Chair of the Marketing, Advertising & Promotions Practice Group and Co-Chair of the Privacy, Cybersecurity and Technology Practice Group at Moritt Hock & Hamroff LLP and can be reached at [tarenth@moritthock.com](mailto:tarenth@moritthock.com) or (516) 880-7235.

*Founded in 1980, Moritt Hock & Hamroff is a 90-attorney full service, AV-rated commercial law firm that provides a wide range of legal services to businesses, corporations and individuals worldwide from its offices in New York City, Garden City and Fort Lauderdale. The firm's practice areas include: closely-held/family business practice; commercial foreclosure; commercial lending & finance; condominium & cooperative services; construction; copyrights, trademarks & licensing; corporate, mergers and acquisitions, & securities; creditors' rights, restructuring & bankruptcy; dispute resolution; domicile planning; employment; healthcare; landlord & tenant; lender finance; litigation; marketing, advertising & promotions; not-for-profit; privacy, cybersecurity & technology; real estate; secured lending, equipment & transportation finance; sports law; tax; and trusts & estates.*



*This Alert is published solely for the interests of friends and clients of Moritt Hock & Hamroff LLP for informational purposes only and should in no way be relied upon or construed as legal advice.*

©2024 Moritt Hock & Hamroff LLP

Attorney Advertising