

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 13-cv-00357-RBJ-BNB

JOHN A. GILLES, on behalf of himself and all others similarly situated,

Plaintiffs,

v.

FORD MOTOR COMPANY, a Delaware corporation,

Defendant.

AMENDED COMPLAINT AND JURY DEMAND

COMES NOW Plaintiff, John A. Gilles, by and through his counsel, Erik G. Fischer, P.C., and asserts the following Amended Complaint pursuant to Fed. R. Civ. P. 15(a)(1)(B) against Defendant, Ford Motor Company, stating as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this civil action pursuant to 28 U.S.C. § 1332.
2. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391. Defendant Ford sells a substantial number of automobiles in this District and has numerous dealerships in this District. Furthermore, acts complained of herein occurred in this District.

PARTIES

3. Plaintiff John A. Gilles ("Mr. Gilles") is an individual residing at 358 Hickory Avenue, Eaton, Colorado 80615. Mr. Gilles is the purchaser of an all-wheel-drive 2013 Ford Escape SE.

4. Ford Motor Company (“Ford”) is a Delaware Corporation with its principal executive offices located at One American Road, Dearborn, Michigan 48126. Ford is a global automotive industry leader and it sells automobiles on six (6) continents. Ford has several dealerships in Colorado and sells vehicles throughout the State.

INTRODUCTION

5. This consumer fraud class action is based on Ford’s false and misleading advertising related to its all-wheel-drive 2013 Ford Escape SE. Ford advertizes the 1.6L EcoBoost® I-4 engine contained in the all-wheel-drive 2013 Ford Escape SE as having an “eco-friendly side” that “deliver[s] the performance of a much larger engine with the efficiency of a smaller one.”

6. Ford claims that the all-wheel-drive model is capable of achieving twenty-two (22) mpg (“mpg”) in the city, and thirty (30) mpg on the highway. These advertisements, however, are false.

7. Mr. Gilles is the purchaser of an all-wheel-drive 2013 Ford Escape SE, and his vehicle has never achieved the gas mileage advertised by Ford and promised by its salespeople.

8. Rather than achieving thirty (30) mpg on the highway, Mr. Gilles has only achieved twenty-five (25) to twenty-six (26) mpg. Mr. Gilles’ experience is shared with all other purchasers of the all-wheel-drive 2013 Ford Escape SE, who were also misled by Ford’s advertising.

9. Mr. Gilles individually on behalf of all other similarly situated (the members of the Plaintiff Class described and defined within this Complaint), alleges as follows:

GENERAL ALLEGATIONS

10. On or about September 1, 2012, Mr. Gilles purchased an all-wheel-drive 2013 Ford Escape SE (hereinafter the “Escape”) at the Spradley Barr Ford dealership located at 4809 South College Avenue, Fort Collins, Colorado.

11. The Escape is equipped with a 1.6L EcoBoost® I-4 engine that combines two (2) different technologies: turbocharging and direct injection.

12. In its corporate disclosures, Ford asserts that “[t]he implementation of our EcoBoost® family of gasoline engines is well established and a major part of our sustainability strategy, delivering both exceptional fuel economy and performance.”

13. On or about April 27, 2012, Raj Nair, group vice president of Ford Global Product Development stated: “The fuel economy of the all-new Escape showcases the continued success of Ford’s development of smaller, yet more powerful engine...Ford understands people want fuel-efficient vehicles *without sacrificing power* and space requirements”(emphasis added).

14. On September 4, 2012, Ken Czubay, Ford vice president, U.S. Marketing, Sales and Service stated: “Customers increasingly value savings at the pump, and Ford is answering the call with a full family of vehicles with leading fuel efficiency and the power to choose which vehicle best meets their needs.”

15. One of the reasons Mr. Gilles purchased the Escape with EcoBoost® technology was that he was attracted to the Escape’s advertised fuel efficiency.

16. Mr. Gilles was impressed with the high gas mileage touted in Ford’s advertising materials, and he was led to believe that he would experience the advertised results.

17. Prior to purchasing his Escape, Mr. Gilles visited Ford’s website.

18. Ford's website contains specifications for the 2013 Escape. This webpage states that the 2013 FWD Escape SE achieves twenty-two (22) mpg in the city and thirty (30) mpg on the highway. It *does not* indicate that the advertised gas mileage is an EPA estimate.

19. On its website, Ford also alleges that the "1.6L EcoBoost® I-4 engine...delivers...the best automatic highway fuel economy in its class."

20. Upon information and belief, this assertion is false, as the Mazda CX-5 actually achieves superior gas mileage.

21. Ford's website states that compared to the Nissan Rogue, the Escape has a farther range and provides "LONGER LASTING joy rides for the dogs."

22. Ford's website states that compared to the Toyota RAV4, customers can "SPEND LESS ON GAS, more on antigravity yoga classes."

23. Ford's website states that compared to the Chevy Equinox, customers can "SPEND LESS ON GAS, more on porcelain penguin figurines."

24. Ford's website states that compared to the Honda CR-V, customers can "SPEND LESS ON GAS, more on overpriced frothy drinks."

25. Ford's 2013 Product Sheet also states that the Escape achieves twenty-two (22) mpg in the city, and thirty (30) mpg on the highway. The Product Sheet *does not* state that these mpg figures are EPA estimates.

26. Mr. Gilles viewed the website of his dealer, Spradley Barr Ford ("Spradley"). Spradley repeatedly touts the Escape as a "gas miser" that achieves thirty (30) mpg. Spradley's website *does not* indicate that the Escape's advertised thirty (30) mpg on the highway is an EPA estimate.

27. Mr. Gilles viewed a series of short web videos by Ford entitled “Escape My Life!” The videos advertise the Escape’s mpg but *do not* state that it is based on an EPA estimate.

28. Salespeople at Spradley informed Mr. Gilles that the Escape would achieve better gas mileage than the 2012 Ford Escape all-wheel-drive four-cylinder (the “2012 Escape”) that Mr. Gilles previously owned.

29. The 2012 Escape owned by Mr. Gilles consistently achieved twenty-eight (28) mpg on the highway under real world driving conditions.

30. Ford’s 2013 Product Sheet states that the 2013 Escape gets “up to 5 mpg better fuel economy...” than previous models.

31. Salespeople attributed the improved gas mileage between the 2012 and 2013 Escape to better aerodynamics, the EcoBoost® engine, and the turbo on the 2013 model.

32. As a result of these advertisements, promotional materials, and statements made by Ford’s salespeople, Mr. Gilles reasonably believed that he would achieve twenty-two (22) mpg in the city, and thirty (30) mpg on the highway in real world driving conditions.

33. Mr. Gilles’ Escape now has approximately 7,000 miles on it, and it is fully broken in.

34. Mr. Gilles’ Escape, however, has never attained the mpg as advertized by Ford or promised by its salespeople.

35. After purchasing the Escape, Mr. Gilles discovered that it consistently achieved gas mileage far below the advertised mpg under normal conditions, and lower mpg than his 2012 Escape.

36. Mr. Gilles' Escape has achieved approximately four (4) fewer mpg than his 2012 Escape.

37. Mr. Gilles did not know when he purchased the Escape that the advertized mpg was inaccurate, or that the Escape would achieve fewer mpg than the 2012 Escape, and he reasonably expected that Ford would not falsely advertise or misstate the Escape's mpg.

38. On the highway, the Escape averages twenty-five (25) to twenty-six (26) mpg while traveling at sixty (60) to sixty-five (65) miles per hour under ideal conditions with no headwind.

39. With a headwind, the Escape has managed only twenty-one (21) to twenty-two (22) mpg on the highway.

40. In short, the Escape is not capable of achieving thirty (30) mpg on the highway under any conditions, nor does it achieve superior gas mileage to the 2012 Escape.

41. Had Mr. Gilles known that Ford's advertisements of the Escape's gas mileage under normal conditions were inflated, he would have considered buying a vehicle from one of Ford's competitors.

42. Numerous purchasers of the Escape have complained that real world gas mileage is far below the advertised fuel economy, and they have published their complaints on reputable automotive websites.

43. Upon information and belief, Ford's advertisements stating that the Escape achieves thirty (30) mpg on the highway were part of a concerted marketing plan to convey inflated expected mpg information to putative class members throughout Colorado and the United States.

Class Action Allegations

44. Plaintiff initially proposes a nationwide class—the “Class”—in litigating this case, as defined as follows:

All purchasers and lessors of 2013 Ford Escape SE all-wheel-drive vehicles who purchased or leased their vehicles in the United States.

Excluded from the above Class is any entity in which Defendant has a controlling interest, and officers or directors of Defendant.

45. Alternatively, Plaintiff proposes a Colorado Class, as defined as follows:

All purchasers or lessors of 2013 Ford Escape SE all-wheel-drive vehicles who purchased or leased their vehicles in Colorado.

Excluded from the above Class is any entity in which Defendant has a controlling interest, and officers or directors of Defendant.

46. **Numerosity of the Class:** The members of the Class are so numerous that their individual joinder is impracticable. In January 2013 alone, sales of the Escape totaled Nineteen Thousand, Nine Hundred and Thirty-Nine (19,939), and similar sales figures should continue throughout the year. Plaintiffs are informed and believe that there are tens of thousands of members in the Class. Class members may be identified through business records regularly maintained by Defendant and its employees and agents, and members of the Class can be notified of the pending action by e-mail, mail, and supplemented by publishing notice, if necessary.

47. **Existence and Predominance of Common Questions of Fact and Law:** There are questions of law and fact that predominate over any questions affecting only individual Class members. The common legal and factual issues include, but are not limited to:

- a. Whether the subject vehicles achieve gas mileage materially lower than the advertised expected mileage;
- b. Whether Ford and its dealerships' overstatement of the Escape's fuel economy was materially misleading;
- c. Whether Ford and its dealerships' advertisements were false and deceptive in advertising the expected mileage of the subject vehicles in normal use;
- d. Whether Ford and its dealerships failed to provide material disclosures that the expected gas mileage cannot be achieved in normal use;
- e. Whether Ford's conduct violates the laws as set forth in this Complaint.

48. **Typicality:** Mr. Gilles' claims are typical of the claims of each member of the Class. Mr. Gilles, like other members of the Class, has sustained damages arising from Ford's violations of the law, as alleged herein. Mr. Gilles and the members of the Class were and are similarly or identically harmed by the same unlawful, deceptive, unfair, systematic, and pervasive pattern of misconduct engaged in by Ford.

49. **Adequacy:** The representative Plaintiff will fairly and adequately represent and protect the interest of the Class members. Undersigned counsel are experienced and competent trial lawyers in complex litigation and class action litigation. There are no material conflicts between the claims of Mr. Gilles and the members of the Class that would make certification inappropriate. Counsel for the Class will vigorously assert the claims of all Class members.

50. **Predominance and Superiority:** This suit may be maintained as a class action under Fed.R.Civ.P. 23, as common questions of law and fact predominate over questions affecting only individual members of the Class, and a class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by individual

Class members are small compared to the burden and expense of individual prosecution of the complex and extensive litigation needed to address Ford's conduct. Further, it would be virtually impossible for members of the Class to individually redress effectively the wrongs done to them. Individualized litigation would increase delay to all parties and overburden this Court, and also presents a potential for inconsistent or contradictory judgments. This Class Action presents far fewer management difficulties, and provides the benefits of a single adjudication and comprehensive supervision by a single court.

FIRST CLAIM FOR RELIEF
(Violation of the Colorado Consumer Protection Act)

51. Plaintiffs hereby incorporate the preceding paragraphs as if fully set forth herein.

52. Defendant engaged in, and caused others to engage in, deceptive trade practices, by falsely advertising the mpg of the Escape.

53. Pursuant to C.R.S. § 6-1-105(1)(e), Defendant and its dealerships knowingly made a false representation as to characteristics of the Escape, by stating that the 2013 all-wheel-drive Escape would achieve better gas mileage than the 2012 model, namely thirty (30) mpg on the highway and twenty-two (22) mpg in the city.

54. These statements *were not* identified as EPA estimates.

55. Pursuant to C.R.S. § 6-1-105(1)(g), Defendant represented that the Escape was of a particular standard, quality and grade while Defendant knew or should have known they were of another.

56. Defendant widely and publically advertises the Escape throughout the United States, in print and electronic media.

57. Defendant's deceptive statements regarding the Escape's ability to achieve thirty (30) mpg on the highway and twenty-two (22) mpg in the city significantly impacts the public.

58. Mr. Gilles, along with members of the Class, were purchasers and customers of Defendant's goods.

59. Plaintiffs suffered damages and losses as described above as a result of Defendant's deceptive trade practices.

60. Ford and its dealerships engaged in bad faith conduct by its actions including, but not limited to, the advertising and sale of the Escape, which is the subject of this lawsuit.

61. Plaintiffs are entitled to treble damages pursuant to the Colorado Consumer Protection Act because Defendant engaged in bad faith conduct. At a minimum, Plaintiffs are entitled to actual damages and costs together with attorney's fees.

SECOND CLAIM FOR RELIEF
Negligent Misrepresentation

62. Plaintiffs hereby incorporate the preceding paragraphs as though fully set forth herein.

63. In the course of its business, Ford and its dealerships negligently stated that the Escape would achieve better gas mileage than the 2012 model, namely that it was capable of achieving thirty (30) mpg on the highway and twenty-two (22) mpg in the city.

64. These statements *were not* identified as EPA estimates.

65. When Ford and its dealerships stated that the Escape could achieve thirty (30) mpg on the highway and twenty-two (22) mpg in the city, they knew that consumers would be unable to achieve the same fuel efficiency.

66. Ford and its dealerships knew that consumers, namely members of the Class, would rely on, or be influenced by, their statements that the Escape would achieve better gas mileage than the 2012 model, namely thirty (30) mpg on the highway and twenty-two (22) mpg in the city.

67. Mr. Gilles, and other members of the Class, did reasonably rely on the fraudulent statements.

68. Due to Ford and its dealerships' misrepresentations, Mr. Gilles and other members of the Class were defrauded when they purchased the Escape.

69. Mr. Gilles and other members of the Class suffered damages from the misrepresentations in an amount to be determined at trial.

THIRD CLAIM FOR RELIEF
Fraudulent Misrepresentation

70. Plaintiffs hereby incorporate the preceding paragraphs as though fully set forth herein.

71. In the course of its business, Ford and its dealerships falsely stated that the Escape would achieve better gas mileage than the 2012 model, namely thirty (30) mpg on the highway and twenty-two (22) mpg in the city.

72. These statements *were not* identified as EPA estimates.

73. In stating that the Escape would achieve better gas mileage than the 2012 model, namely thirty (30) mpg on the highway and twenty-two (22) mpg in the city, Ford and its dealerships knew that the statement was false, as purchasers would be unable to achieve the same results.

74. Ford and its dealerships knew that consumers, namely members of the Class, would rely on, or be influenced by, its statements that the Escape would achieve thirty (30) mpg on the highway and twenty-two (22) mpg in the city.

75. Mr. Gilles, and other members of the Class, did reasonably rely on the fraudulent statements.

76. Due to Ford and its dealerships' fraudulent misrepresentations, Mr. Gilles and other members of the Class were defrauded when they purchased the Escape.

77. Mr. Gilles, and other members of the Class, suffered damages from the misrepresentation in an amount to be determined at trial.

WHEREFORE, Plaintiffs respectfully request this Court enter judgment in their favor and against the Defendants as follows:

- A. Award Plaintiffs actual damages sustained from Defendant's conduct;
- B. Award Plaintiffs reasonable attorney's fees and costs associated with this action;
- C. Award Plaintiffs treble damages pursuant to the Colorado Consumer Protection Act;
- D. Issue injunctive relief against Ford, requiring that it accurately advertise the mpg of the Escape; and
- E. Grant Plaintiffs any further relief this Court deems proper and just.

Plaintiffs demand a trial by jury.

Dated this 16th day of April, 2013.

Respectfully submitted,

ERIK G. FISCHER, P.C.



/s/ Erik G. Fischer

Erik G. Fischer, #16856

Gordon M. Hadfield, # 42759

Original signature on file at the office of Erik G. Fischer, P.C., pursuant to C.R.C.P. § 121-1-26(9); filed electronically via EC/CMF.

Plaintiff's Address:
358 Hickory Avenue
Eaton, Colorado 80615

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 16th day of April, 2013, a true and correct copy of the foregoing **AMENDED COMPLAINT AND JURY DEMAND** was electronically filed and served via the Court's CM/ECF system upon the following:

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/s/ Alexandra L. Braeger _____
FOR Erik G. Fischer, P.C.
*Original signature on file at the office of Erik G.
Fischer, P.C., pursuant to C.R.C.P. § 121-1-26(9);
filed electronically via EC/CMF.*