

D-1-GN-15-004504
NO. _____

THE STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
VOLKSWAGEN GROUP OF AMERICA,	§	
INC.; AUDI OF AMERICA, LLC	§	
	§	201ST
Defendants.	§	_____ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff the STATE OF TEXAS (“State” or “Plaintiff”), acting by and through Attorney General of Texas Ken Paxton, complains of VOLKSWAGEN GROUP OF AMERICA, INC. (“Volkswagen of America”) and AUDI OF AMERICA, LLC (“Audi of America”) (collectively, “Defendants”), and for cause of action would respectfully show:

**I.
DISCOVERY CONTROL PLAN**

1.1 Plaintiff respectfully requests that discovery be conducted under Level 2 Discovery, pursuant to TEX. R. CIV. P. 190.4.

1.2 This case is not subject to the restrictions of expedited discovery under TEX. R. CIV. P. 169 because:

- a. The relief sought by the State includes non-monetary injunctive relief; and
- b. The State’s claims for monetary relief including penalties, consumer redress and attorneys’ fees and costs are in excess of \$100,000 and could exceed \$1,000,000.

**II.
AUTHORITY**

2.1 This action is brought by Attorney General Ken Paxton, through the Consumer Protection Division, in the name of the STATE OF TEXAS, pursuant to the authority granted by §17.47 of the Texas Deceptive Trade Practices–Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.41 *et seq.* (“DTPA”), upon the grounds that Defendants have engaged in false, misleading and deceptive acts and practices in the course of trade and commerce. Pursuant to §17.47 of the DTPA, the Attorney General is authorized to seek injunctive relief, penalties, and consumer redress for conduct declared unlawful under §§17.46(a) and (b) of the DTPA.

**III.
DEFENDANTS**

3.1 Defendant VOLKSWAGEN GROUP OF AMERICA, INC. is a company doing business in Texas as alleged specifically below, and may be served with process through CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701, or wherever it may be found.

3.2 Defendant AUDI OF AMERICA, LLC is a foreign corporation created under the laws of Delaware doing business in the State of Texas. Audi is not registered in Texas and/or has not designated an agent for service of process in Texas. Audi may be served through the Texas Secretary of State. Tex. Bus. Org. Code § 5.251.

**IV.
JURISDICTION**

4.1 This Court has jurisdiction over this action under 17.47(b) of the Texas Business and Commerce Code.

**V.
VENUE**

5.1 Venue of this suit lies in Travis County, Texas for the following reasons:

a. Under the §17.47(b) of the DTPA, venue is proper because Defendants have done business in Travis County, Texas, by advertising, marketing, distributing, selling, and financing motor vehicles manufactured by Volkswagen and/or Audi.

VI. PUBLIC INTEREST

6.1 Plaintiff, the State of Texas, has reason to believe Defendants are engaging in, have engaged in, or are about to engage in acts or practices declared to be unlawful under the DTPA; therefore, the Consumer Protection Division of the Office of the Attorney General of the State of Texas believes that these proceedings are in the public interest.

VII. TRADE AND COMMERCE

7.1 Defendants have, at all times described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by § 17.45(6) of the DTPA.

VIII. ACTS OF AGENTS

8.1 Whenever in this Petition it is alleged that Defendants did any act, it is meant that:

- a. Defendants performed or participated in the act, or
- b. Defendants’ officers, agents, employees, affiliates, or subsidiaries performed or participated in the act on behalf of and under the authority of the Defendants.

IX. BACKGROUND FACTS

9.1 Volkswagen of America, a wholly owned subsidiary of Volkswagen AG, manufactures and sells vehicles in the United States (“U.S.”). The company operates a manufacturing plant in Chattanooga, Tennessee and its headquarters are located in Herndon, Virginia, where they also house Audi of America, the U.S. operations of Audi AG, another wholly owned subsidiary of Volkswagen AG.

9.2 Defendants advertise, market, distribute, sell, and finance motor vehicles throughout the state of Texas. Defendants have approximately forty-nine authorized car dealerships in the state of Texas, including three in Travis County.

9.3 On September 18, 2015, the United States Environmental Protection Agency (“EPA”) issued a notice of violation (“NOV”) of the Clean Air Act¹ to Volkswagen AG, Audi AG, and Volkswagen Group of America, Inc. The NOV alleged that four-cylinder Volkswagen and Audi diesel cars from model years 2009-2015 include software that circumvents EPA emissions standards for certain air pollutants. The affected diesel models include:

Year	Model
2009-2015	Jetta
2009-2014	Jetta Sportswagen
2012-2015	Beetle
2012-2015	Beetle Convertible
2010-2015	Audi A3
2010-2015	Golf
2015	Golf Sportswagen
2012-2015	Passat

9.4 As described in the EPA’s NOV to Volkswagen, a sophisticated software algorithm on certain Volkswagen vehicles detects when the car is undergoing official emissions testing, and turns full emissions controls on only during the test. The effectiveness of these vehicles’ pollution emissions control devices is greatly reduced, if not completely disabled, during all normal driving situations. Accordingly, Defendants’ “clean diesel” in cars meet emissions standards only in the laboratory or testing station, but during normal operation, the cars emit nitrogen oxides, or NOx,

¹ 42 U.S. CODE CHAPTER 85

at up to 40 times the allowable standard. The software produced by Volkswagen is a “defeat device,” as defined by the Clean Air Act. The Clean Air Act requires vehicle manufacturers to certify to EPA that their products will meet applicable federal emission standards to control air pollution, and every vehicle sold in the U.S. must be covered by an EPA-issued certificate of conformity. Motor vehicles equipped with defeat devices, which reduce the effectiveness of the emission control system during normal driving conditions, cannot be certified. By making and selling vehicles with defeat devices that allowed for higher levels of air emissions than were certified to EPA, Volkswagen violated two important provisions of the Clean Air Act.²

9.5 Following the EPA’s NOV, Volkswagen AG’s then-CEO Martin Winterkorn issued a written and then a video apology for the conduct. Likewise, Volkswagen of America’s President and CEO, Michael Horn offered “[Volkswagen of America’s] sincere apologies to those affected by [Volkswagen of America’s] violation of the carbon EPA emission standards” on a video posted to <http://www.vwdieselfinfo.com>, a website Defendant Volkswagen of America has established to provide consumers with information regarding the scandal. Mr. Horn continues in the video to say that “[Volkswagen of America] betrayed the trust of...our customers...and the public.”

X. MARKETING

10.1 Beginning with the 2009 model year, Defendants began marketing and selling a line of “clean diesel” vehicles as low-emissions, high-efficiency, and high-performance. However, Defendants’ “clean diesel” vehicles could only achieve the two latter claims by sacrificing the first.

² See EPA’s News Release, dated September 18, 2015, titled “EPA, California Notify Volkswagen of Clean Air Act Violations / Carmaker allegedly used software that circumvents emissions testing for certain air pollutants”

Whether consumers purchased a “clean diesel” vehicle to be “green,” to be frugal, or to have fun, consumers did not get what was promised.

10.2 Defendants marketed their “clean diesel” vehicles by distancing themselves from the old notion of “dirty diesel.” “Diesel,” one ad says, “is no longer a dirty word.” Defendants represented that not only were these new vehicles cleaner than older diesels, they were actually cleaner than most of the vehicles on the road. Defendants touted the vehicles’ reduced emissions by encouraging consumers to remain conscious of the environmental effects of driving automobiles by choosing allegedly lower-emissions options like Defendants’ “clean diesel” vehicles.

10.3 At the same time, Defendants marketed their “clean diesel” vehicles as being highly fuel-efficient. However, the Defendants’ “clean diesel” vehicles reportedly only achieve such mileage by disabling emission control systems. Defendants made claims about the fuel efficiency of all their “clean diesel” vehicles in brochures, internet advertisements, and television advertisements produced for the “clean diesel” vehicles. Because the advertised fuel efficiency was only achieved through use “defeat device” software, those representations were misleading.

10.4 Further, Defendants marketed their “clean diesel” cars as being high-performance and being fun to drive. Defendants engaged in a marketing campaign that purported to challenge the myths about diesel, including that diesel is slow and dirty, by showing the “clean diesel” vehicles engaging in high-performance driving. Likewise, Defendants’ brochures emphasized both the horsepower and torque of the “clean diesel” vehicles. Again, such performance was only possible by circumventing the emission control systems.

10.5 Texas consumers saw these advertisements; they responded by purchasing approximately 32,000 of Defendants’ “clean diesel” vehicles since their introduction into the

market, and they paid a premium for Defendants' alleged low-emissions, high-efficiency, high-performance "clean diesels."

XI.
VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT

11.1 The DTPA declares unlawful any false, misleading, or deceptive acts or practices in the conduct of any trade or commerce in § 17.46 (a). Further, it includes a non-exhaustive lists of behaviors that are deemed to be false, misleading or deceptive acts or practices in § 17.46(b).

11.2 The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition. Defendants have in the course of trade and commerce engaged in false, misleading, and deceptive acts and practices declared unlawful in §§17.46(a) and (b) of the DTPA, by:

- a. engaging in false, misleading, or deceptive acts or practices in the conduct of trade or commerce, in violation of § 17.47(a) of the DTPA;
- b. causing confusion or misunderstanding as to the sponsorship, approval, or certification of its diesel vehicles, in violation of § 17.46(b)(2) of the DTPA;
- c. representing that its diesel vehicles have sponsorship, approval, characteristics, uses, and benefits which they do not have, in violation of § 17.46(b)(5) of the DTPA;
- d. representing that its diesel vehicles are of a particular standard, quality, and grade, when they are of another, in violation of § 17.46(b)(7) of the DTPA;
- e. advertising its diesel vehicles with the intent not to sell them as advertised, in violation of § 17.46(b)(9); and
- f. failing to disclose information concerning its diesel vehicles which was known at the time of the transaction with the intention to induce consumers into a

transactions into which consumer would not have entered had the information been disclosed, in violation of § 17.46(b)(24) of the DTPA.

**XII.
RULE 194 REQUEST FOR DISCLOSURE**

12.1 Pursuant to Texas Rule of Civil Procedure 194, the State requests that Defendants disclose, within 50 days of this petition, the information or material described in Rule 194.2.

**XIII.
REQUEST FOR INJUNCTION**

13.1 Because the Defendants have engaged in the unlawful acts and practices described above, Defendants have violated the law as set forth herein. Unless restrained by this Honorable Court, Defendants may continue to violate the laws of the State of Texas and cause additional injury, loss and damage to its Texas consumers.

13.2 Plaintiff, the State of Texas respectfully requests that this Court (1) set this matter for trial; (2) issue a temporary injunction after notice and hearing; and (3) issue a permanent injunction upon final hearing, restraining and enjoining Defendants, Defendants' agents, servants, employees, attorneys, and any other person in active concert or participation with Defendants, from engaging in the following acts or practices:

- a. using a "defeat device" in its motor vehicles to evade emissions standards;
- b. engaging in activity that is designed to circumvent government testing of its motor vehicles;
- c. causing confusion or misunderstanding as to the sponsorship, approval, or certification of its motor vehicles;
- d. representing that its motor vehicles have sponsorship, approval, characteristics, uses, and benefits which they do not have;

e. representing that its diesel vehicles are of a particular standard, quality, and grade, when they are of another; and

f. advertising its diesel vehicles with the intent not to sell them as advertised.

**XIV.
REQUEST FOR RESTITUTION**

14.1 Plaintiff, the State of Texas, respectfully requests that upon final hearing, this Court order Defendants to restore all money or other property acquired by means of unlawful acts or practices, as authorized by TEX. BUS. & COM. CODE ANN. § 17.47(d).

**XV.
REQUEST FOR CIVIL PENALTIES**

15.1 Plaintiff, the State of Texas, respectfully requests that upon final hearing, this Court order Defendants to pay civil penalties in the amount of not more than \$20,000 per violation of the DTPA, pursuant to TEX. BUS. & COM. CODE ANN. § 17.47(c)

**XVI.
ATTORNEY FEES AND COSTS OF COURT**

16.1 Plaintiff, the State of Texas, respectfully requests that this Court award the State its costs of this action, including reasonable attorneys' fees and costs, as provided by TEX. GOV'T CODE § 402.006(c).

**XVII.
TRIAL BY JURY**

17.1 Plaintiff herein requests a jury trial and will tender the jury fee to the Travis County District Clerk's Office pursuant to TEX. R. CIV. P. 216 and TEX. GOV'T CODE § 51.604.

**XVIII.
PRAYER**

18.1 Plaintiff, the State of Texas, respectfully prays that Defendants Volkswagen Group of America, Inc. and Audi of America, LLC be served with citation as required by law and that

this Court grant judgment to Plaintiff against Defendants for all relief requested herein and to all other relief to which Plaintiff may show itself entitled.

Respectfully Submitted,

KEN PAXTON
Attorney General of Texas

CHARLES E. ROY
First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

TOMMY PRUD'HOMME
Chief, Consumer Protection Division

/s/ Pedro Perez, Jr.
PEDRO PEREZ, JR.
Assistant Attorney General
State Bar No. 00788184
Pedro.Perez@texasattorneygeneral.gov

JACOB A. PETRY
Assistant Attorney General
State Bar No. 24088219
Jacob.Petry2@texasattorneygeneral.gov

RAY OLAH
Assistant Attorney General
State Bar No. 00794391
Ray.Olah@texasattorneygeneral.gov

Office of the Attorney General
Consumer Protection Division
P.O. Box 12548
Austin, Texas 78711
Telephone: (512) 475-4656
Facsimile: (512) 463-1267

ATTORNEYS FOR THE STATE OF TEXAS

CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): _____ COURT (FOR CLERK USE ONLY): _____

STYLED State of Texas v. Volkswagen Group of America, Inc.

(e.g., John Smith v. All American Insurance Co.; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet: Name: _____ Email: _____ Pauline Sisson pms3@texasattorneygeneral.go Address: _____ Telephone: _____ 300 W. 15th St., 9th Floor 512-936-1764 City/State/Zip: _____ Fax: _____ Austin TX 78701 512-463-1267 Signature:  - State Bar No: _____	Names of parties in case: Plaintiff(s)/Petitioner(s): State of Texas Defendant(s)/Respondent(s): Volkswagen Group of America, Inc	Person or entity completing sheet is: <input type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input checked="" type="checkbox"/> Other: Legal Assistant Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____
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[Attach additional page as necessary to list all parties]

2. Indicate case type, or identify the most important issue in the case (select only 1):

Civil			Family Law		
Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:	Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input type="checkbox"/> Other Injury or Damage:	Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	Post-judgment Actions (non-Title IV-D) <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocal (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:	
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:	Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input checked="" type="checkbox"/> Other: enforcement				
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	Probate & Mental Health Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:				

3. Indicate procedure or remedy, if applicable (may select more than 1):

<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover
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4. Indicate damages sought (do not select if it is a family law case):

Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees
 Less than \$100,000 and non-monetary relief
 Over \$100,000 but not more than \$200,000
 Over \$200,000 but not more than \$1,000,000
 Over \$1,000,000