

99-028

TRADE AND COMMERCE: VIRGINIA CONSUMER PROTECTION ACT.

Misrepresentation of geographic origin of final assembly of automobile constitutes violation of Act. Described practice of automobile manufacturers' requiring franchisees to charge destination charges for delivery of vehicles from final assembly point, which includes cost of shipping components to that point, does not violate Act.

The Honorable Walter A. Stosch
Member, Senate of Virginia
August 30, 1999

You ask whether a practice of automobile manufacturers requiring franchisees to charge destination charges for delivery of vehicles from the final assembly point, which include the cost of shipping components to that point, violates § 59.1-200(A)(4) of the *Code of Virginia*,¹ a portion of the Virginia Consumer Protection Act of 1977² (the "Consumer Protection Act" or "Act").

You indicate that automobile manufacturers include in the "destination charge" on new car stickers the cost of shipping parts to the point of assembly. You are advised that automobile manufacturers allow consumers to believe that "destination charges" accurately reflect only the actual costs of shipping new vehicles from the final assembly point to the dealership. You inquire whether an automobile manufacturer's practice of requiring franchisees to charge "destination charges" in excess of the actual costs for transporting a vehicle from its point of origin to a dealer violates the Consumer Protection Act. If such practice is in violation of the Act, you also request advice regarding any recourse that may be available to the consumer.

The Consumer Protection Act is patterned after the language in the Federal Trade Commission Act prohibiting "unfair or deceptive acts or practices."³ Similar acts have been adopted by many states which, like the Consumer Protection Act, codify and supplement the common law definitions of "fraud" and "misrepresentation."⁴ The Consumer Protection Act amplifies the common law concepts by declaring certain specific practices to be unlawful.⁵ Section 59.1-200(A)(4) makes it unlawful for suppliers to misrepresent the "geographic origin in connection with goods or services." Consequently, a supplier who misrepresents the geographic origin of goods or services would be in violation of the Act.

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the legislature.⁶ The General Assembly has not defined the term "geographic origin" as used in § 59.1-200(A)(4). Consequently, the term "geographic origin" used in the statute must be given its ordinary meaning within the statutory context.⁷ The term "geographic" generally means "of or relating to geography"; "belonging to or characteristic of a particular region."⁸ The term "geography" generally means "a science that deals with the earth and its life"; "the geographic features of an area."⁹ Finally, the term "origin" generally means "rise, beginning, or derivation from a source."¹⁰

A fundamental principle of statutory construction is that the clear and unambiguous words of a statute must be accorded their plain meaning.¹¹ The

ordinary meaning of the term "geographic origin," as used in § 59.1-200(A)(4), suggests that an automobile manufacturer would violate the Act should such manufacturer misrepresent the geographic characteristic or the specific region or source of origin where the final assembly of the automobile actually occurs. You do not provide any facts to support a conclusion that automobile manufacturers are misrepresenting the geographic origin of the final assembly point of an automobile.¹²

The specific business practice you describe does not lead to a conclusion that consumers are being misled in connection with a vehicle's final assembly point. Accordingly, based on the facts in your request, I must conclude that the business practice you describe does not violate § 59.1-200(A)(4).¹³ Section 59.1-200(A)(4) declares unlawful the following fraudulent act committed by a supplier relating to a consumer transaction: "Misrepresenting geographic origin in connection with goods or services."

²Sections 59.1-196 to 59.1-207.

³15 U.S.C.A. § 45(a)(1) (West 1997); see Jonathan Sheldon & Carolyn L. Carter, National Consumer Law Center, *Unfair and Deceptive Acts and Practices* § 1.1 (4th ed. 1997) [hereinafter UDAP].

⁴See UDAP, *supra* app. A (4th ed. 1997 & Cum. Supp. 1999). See, e.g., *State ex rel. Danforth v. Independence Dodge, Inc.*, 494 S.W.2d 362, 367 n.3 (Mo. App. 1973) (quoting Mo. Rev. Stat. § 407.020 (1969)).

⁵Section 59.1-200(A) lists 33 prohibited practices.

⁶See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

⁷See *Grant v. Commonwealth*, 223 Va. 680, 684, 292 S.E.2d 348, 350 (1982); *Loyola Fed. Savings v. Herndon*, 218 Va. 803, 805, 241 S.E.2d 752, 753 (1978).

⁸Webster's Third New International Dictionary of the English Language 948 (1993).

⁹*Id.*

¹⁰*Id.* at 1591.

¹¹See *Diggs v. Commonwealth*, 6 Va. App. 300, 302, 369 S.E.2d 199, 200 (1988).

¹²I note that the facts you present suggest that consumers may be misled about the actual cost of delivery of a vehicle from the final assembly point to the dealerships. I do not, however, address whether the specific conduct described violates any other prohibited practices listed in § 59.1-200(A).

¹³Since I conclude that the specific practice you describe does not violate § 59.1-200(A)(4), it is, of course, unnecessary to respond to your request for advice regarding recourse to consumers.

