

# TrueCar, Dealerships Fight Over False Ad Claims

By [John Petrick](#)

Law360 (April 24, 2019, 7:25 PM EDT) -- Car dealers can sue auto-pricing website TrueCar for money it made through allegedly false advertising, even if the dealers can't prove they suffered financial losses themselves, they told a New York federal court on Tuesday.

U.S. District Judge P. Kevin Castel was correct in his [March decision](#) allowing the car dealers to pursue their claims that, under a federal trademark and competition law, [TrueCar Inc.](#) owes them the funds it took in from making allegedly false promises to consumers through its advertisements, the dealers said.

TrueCar had argued in a motion for reconsideration that the judge had been wrong to apply a disgorgement provision of the Lanham Act to the false advertising suit, but the dealers shot back in Tuesday's opposition that the judge had properly considered and ruled on that issue in their favor.

"TrueCar does not dispute — nor can it — that the monetary remedies provisions of the Lanham Act ... expressly apply to trademark and false advertising claims," the dealers said.

TrueCar had asked the court on Monday to rethink its decision on disgorgement for the dealers, or, in the alternative, to let it immediately appeal the question to the Second Circuit, according to filings in the case.

The plaintiffs in the suit, 108 car dealerships across the country affiliated with the referral site, accused TrueCar of violating the Lanham Act by making false promises to consumers in its ads. Its marketing touted a negotiation-free, haggle-free buying experience for customers who purchased a car from dealers linked to TrueCar's site. That experience was often not what the consumers experienced once they reached the car lots, the dealers alleged.

Misleading marketing touting price transparency to consumers lost each of the plaintiff dealerships anywhere from 25 to 85 sales a year, which can amount to more than \$1 million in lost revenue, according to the complaint. But in March, the judge found they hadn't provided enough evidence of those damages and threw out those claims.

TrueCar took aim in its reconsideration bid on Monday at the portion of Judge Castel's ruling that kept alive the possibility that the car info site would have to pay the dealers alleged ill-gotten profits for intentional Lanham Act violations.

The judge erred, the auto-referral site argued, in relying on how the Lanham Act addressed trademark infringement cases rather than false advertising claims, saying they are hardly comparable.

TrueCar maintains that under the law, disgorgement is not an option in false advertising cases without the dealers establishing how they suffered a financial loss.

"Respectfully, the court overlooked these controlling principles and committed a clear error of law in denying TrueCar's summary judgment motion," the company said in its filing.

"The plain terms of the Lanham Act require that any remedy, including disgorgement, must be predicated on a violation having 'been established in any civil action.' There is no exception for disgorgement based on deterrence in a false advertising case," TrueCar said.

Steven Blatt of [Bellavia Blatt PC](#), an attorney representing the dealerships, told Law360 in an email that they will prevail.

"Our position is that [the] court's determination on the summary judgment motion had it right the first time," he said. "TrueCar failed, among other things, to meet its burden to even sustain a motion for reconsideration."

A representative for TrueCar declined to comment on Tuesday .

TrueCar Inc. is represented by Harold P. Weinberger, Norman C. Simon and Dayna M. Chikamoto of [Kramer Levin Naftalis & Frankel LLP](#).

The dealerships are represented by Robert E. Chudakoff and Thomas M. Williams [Ulmer & Berne LLP](#), and Leonard A. Bellavia and Steven H. Blatt of Bellavia Blatt & Crossett PC.

The case is Dependable Sales & Service Inc. et al. v. TrueCar Inc., case number 1:15 -cv- 01742, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Reenat Sinay. Editing by Jay Jackson Jr.