No. 97576-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

DUANE YOUNG, Petitioner,

vs.

TOYOTA MOTOR SALES, U.S.A., Inc., Respondent.

ANSWER TO AMICUS CURIAE BRIEF OF THE ATTORNEY GENERAL OF THE STATE OF WASHINGTON

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ANSWER TO AMICUS CURIAE BRIEF

Toyota acknowledges and appreciates the responsibility the Attorney General for the State of Washington has to protect consumers from unfair or deceptive acts or practices in trade or commerce. Toyota respectfully submits that nothing in existing case law, or the Court of Appeal's affirmation and restatement of that case law, interferes with the Attorney General's efforts to vindicate consumer rights.

As court after court in this state have affirmed, "implicit in the definition of 'deceptive' [under Washington's Consumer Protection Act ("CPA")] is the understanding that the actor misrepresented something of material importance." *Hiner v. Bridgestone/Firestone, Inc.*, 91 Wash. App. 722, 730, 959 P.2d 1158 (1998) (emphasis omitted), *rev'd in part on other grounds*, 138 Wash.2d 248, 978 P.2d 505 (1999). In fact, the Amicus Curiae Brief of the Attorney General for the State of Washington ("AB") acknowledges, "in cases where this Court has found deception under the CPA, it has looked for information that could be *of importance to a reasonable consumer – and hence material* – without focusing on any evidence of actual consumer reliance." (AB, 4) (emphasis added).

Evaluating Mr. Young's claim through this lens, the Court of Appeal correctly held that it "will not presume that a $10 part *for which the consumer was not charged* was material to purchase of the

$7,525 model 2014 limited package. The trial court found that Mr. Young presented no credible evidence that the temperature gauge error was material to him, and no evidence whatsoever that it was material to other consumers." *Young v. Toyota Motor Sales, U.S.A.*, 442 P.3d 5, 12 (Wash. Ct. App. 2019) (emphasis added).

As is evident, the Court of Appeal did not suggest that Mr. Young had to prove reliance on Toyota's misstatement. This should allay the concern of the Attorney General that the lower court wrote into the law a reliance element. Similarly, the Court of Appeal did not write into the law a "financial materiality" element, but rather noted that Mr. Young failed to present evidence that the $10 part was financially material to him, or "material for *any nonfinancial reason*." *Id*. at 10 (emphasis added.)

In short, nothing in the Court of Appeal's decision changes the law of the State of Washington, nor does it interfere with the Attorney General's enforcement authority.

DATED this 14th day of November, 2019.

Respectfully Submitted,

By: */s/ Heather A. Hedeen*
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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of California that on November 14, 2019, at Los Angeles, California, I caused to be served the foregoing document: **ANSWER TO AMICUS CURIAE BRIEF OF THE ATTORNEY GENERAL OF THE STATE OF WASHINGTON** on the following persons or entities in the matter indicated:

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☑ (VIA U.S. MAIL) I served the foregoing document(s) by U.S. Mail, as follows: I placed a true copy of the document in a sealed envelope addressed to each interested party as shown above. I placed each such envelope with postage thereon fully prepaid, for collection and mailing at Shook, Hardy & Bacon LLP, Los Angeles, California. I am readily familiar with Shook, Hardy & Bacon LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

Executed on November 14, 2019 at Los Angeles, California.

Deborah Hillburn

Deborah Hillburn

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Filed with Court:	Supreme Court
Appellate Court Case Number:	97576-1
Appellate Court Case Title:	Duane Young, et al v. Toyota Motor Sales, USA
Superior Court Case Number:	15-2-01859-5

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Comments:

Answer to Amicus Curiae Brief of the Attorney General of the State of Washington

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