

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
4/13/2020 10:53 AM  
BY SUSAN L. CARLSON  
CLERK

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
4/22/2020  
BY SUSAN L. CARLSON  
CLERK

NO. 97576-1

---

**SUPREME COURT OF THE STATE OF WASHINGTON**

---

DUANE YOUNG,

Petitioner,

v.

TOYOTA MOTOR SALES, U.S.A.,

Respondent.

---

**AMICUS BRIEF OF THE ATTORNEY GENERAL  
FOR THE STATE OF WASHINGTON**

---

ROBERT W. FERGUSON  
Attorney General

MATTHEW GEYMAN  
Assistant Attorney General  
WSBA #17544

AMY C. TENG  
Assistant Attorney General  
WSBA #50003

800 Fifth Avenue, Suite 2000  
Seattle, WA 98104  
(206) 464-7704

*Attorneys for the State of Washington*

**TABLE OF CONTENTS**

I. INTRODUCTION.....1

II. INTEREST OF AMICUS CURIAE.....2

III. ISSUES PRESENTED BY AMICUS.....3

IV. ARGUMENT .....3

    A. To Establish Deception Under the CPA, Courts Need  
    Only Legally Conclude That the Challenged Act or  
    Practice Has a Capacity to Deceive. ....4

    B. Unlike the FTC Act, the CPA Does Not Require a  
    Separate Finding of Materiality .....6

    C. The Deception Standard Under the FTC Act Has No  
    Application to the CPA.....10

    D. A “Financial Materiality” Requirement Would Limit the  
    Scope of the CPA, Contrary to Legislative Intent. ....12

V. CONCLUSION .....15

## TABLE OF AUTHORITIES

### Cases

<i>Bowers v. Transamerica Title Ins. Co.</i> , 100 Wn.2d 581, 675 P.2d 193 (1983).....	5
<i>City of Federal Way v. Koenig</i> , 167 Wn.2d 341, 217 P.3d 1172 (2009).....	7
<i>FTC v. Cyberspace.com, LLC</i> , 453 F.3d 1196 (9th Cir. 2006) .....	11
<i>Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.</i> , 105 Wn.2d 778, 719 P.2d 531 (1986).....	5, 6, 12
<i>Hiner v. Bridgestone/Firestone, Inc.</i> , 91 Wn. App. 722, 959 P.2d 1158 (1998), <i>rev'd in part on other grounds</i> , 138 Wn.2d 248, 978 P.2d 505 (1999).....	8
<i>Indoor Billboard/Washington, Inc. v. Integra Telecom of Wash., Inc.</i> , 162 Wn.2d 59, 170 P.3d 10 (2007).....	5, 6, 9
<i>Leingang v. Pierce Cty. Med. Bureau, Inc.</i> , 131 Wn.2d 133, 930 P.2d 288 (1997).....	5, 12, 14
<i>Klem v. Wash. Mut. Bank</i> , 176 Wn.2d 771, 295 P.3d 1179 (2013).....	3, 4, 9
<i>Panag v. Farmers Ins. Co. of Wash.</i> , 166 Wn.2d 27, 204 P.3d 885 (2009).....	passim
<i>Potter v. Wilbur–Ellis Co.</i> , 62 Wn. App. 318, 814 P.2d 670 (1991).....	9
<i>State v. Kaiser</i> , 161 Wn. App. 705, 254 P.3d 850 (2011).....	14
<i>State v. LA Investors, LLC</i> , 2 Wn. App. 2d 524, 410 P.3d 1183 (2018) <i>review denied</i> , 190 Wn.2d 1023, 418 P.3d 796 (2018).....	12

<i>State v. Ralph Williams' North West Chrysler Plymouth, Inc.</i> , 87 Wn.2d 298, 553 P.2d 423 (1976).....	5, 13
<i>State v. Reader's Digest Ass'n, Inc.</i> , 81 Wn.2d 259, 501 P.2d 290 (1972).....	4
<i>Testo v. Russ Dunmire Oldsmobile, Inc.</i> , 16 Wn. App. 39, 554 P.2d 349 (1976).....	9
<i>Thornell v. Seattle Serv. Bureau, Inc.</i> , 184 Wn.2d 793, 363 P.3d 587 (2015).....	9
<i>Young Ams. for Freedom v. Gorton</i> , 91 Wn.2d 204, 588 P.2d 195 (1978).....	3
<i>Young v. Toyota Motor Sales, U.S.A.</i> , 9 Wn. App. 2d 26, 442 P.3d 5 (2019).....	passim

**Statutes**

15 U.S.C. § 45(a)(4)(A)(ii) .....	13, 15
RCW 19.86.090 .....	2
RCW 19.86.093 .....	8
RCW 19.86.095 .....	3
RCW 19.86.920 .....	passim

**Other Authorities**

<i>In the Matter of Cliffdale Assocs., Inc.</i> , 103 F.T.C. 110, 1984 WL 565319 (1984) .....	10
--	----

## I. INTRODUCTION

Proving deception under the Washington Consumer Protection Act (CPA), RCW 19.86, is a question of law for the courts, namely, whether a challenged act or practice has a *capacity* to deceive. A finding of actual deception is not required. In addition, courts need not make a separate finding of materiality in order to find a particular act or practice deceptive under the CPA; rather, materiality is implicit insofar as an act or practice that has a capacity to deceive is one that could affect consumers.

The Court of Appeals made two critical errors contrary to precedent. First, the Court of Appeals misstated the standard for deception under the CPA by erroneously adopting the federal standard under the Federal Trade Commission (FTC) Act which, unlike the CPA, (1) treats materiality as a separate element that (2) must be established as a question of fact. Moreover, unlike the CPA, which mandates that its provisions “shall be liberally construed” to protect Washington consumers, RCW 19.86.920, the FTC Act contains no such liberal construction mandate.

Second, the Court of Appeals erred in suggesting that Toyota’s practice could not be deceptive if the practice was “financially immaterial” to the consumer. To the contrary, if a challenged act or practice has a capacity to deceive, the deception requirement is satisfied under the CPA, regardless of the financial magnitude of the deception. Forgiving deceptive

yet “financially immaterial” statements would allow these deceptive practices to evade CPA enforcement by the Attorney General. While the financial materiality of statements might be considered in establishing causation and injury to a private plaintiff, it should play no role in establishing deception in any type of CPA action.

The Court of Appeals’ erroneous analysis would only serve to limit the reach of the Attorney General’s CPA enforcement authority while encouraging a race-to-the-bottom marketing strategy for businesses. These outcomes are anathema to the CPA’s purpose “to protect the public and foster fair and honest competition.” RCW 19.86.920.

## **II. INTEREST OF AMICUS CURIAE**

Amicus Curiae is the Attorney General for the State of Washington. The Attorney General is specifically authorized under the CPA to bring actions on behalf of the State of Washington to protect consumers from unfair and deceptive acts or practices in trade or commerce. Private parties may also bring actions under the CPA. RCW 19.86.090. Legitimate actions by private litigants supplement the Attorney General’s efforts and vindicate consumers’ rights. The Attorney General has a significant interest in ensuring that the CPA is properly construed in all actions.

The Attorney General’s constitutional and statutory powers include the submission of amicus curiae briefs on matters that affect the public

interest. See *Young Ams. for Freedom v. Gorton*, 91 Wn.2d 204, 212, 588 P.2d 195 (1978). The Legislature intended for the Attorney General to have the opportunity to participate in private-litigant CPA cases, as evidenced by the statutory requirements that the Attorney General be served with any complaint for injunctive relief under the CPA and with any appellate brief that addresses any provision of the CPA. RCW 19.86.095.

The Attorney General respectfully submits this amicus curiae brief to provide the Court with additional briefing to address the proof necessary to establish deception under the CPA.<sup>1</sup>

### **III. ISSUES PRESENTED BY AMICUS**

Is deception under the CPA a question of law? In determining whether an act or practice is deceptive under the CPA, must the court make a separate finding of materiality?

### **IV. ARGUMENT**

In the years since the Legislature enacted the CPA, “Washington has developed its own jurisprudence regarding application of Washington’s CPA.” *Klem v. Wash. Mut. Bank*, 176 Wn.2d 771, 787, 295 P.3d 1179 (2013). While Washington courts may look to federal decisions and orders of the FTC interpreting federal statutes dealing with the same or similar

---

<sup>1</sup> The Attorney General limits his brief to the issues discussed here and does not take a position on the ultimate merits of this action.

matters, federal decisions are merely “guiding, but not binding.” *Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 47, 204 P.3d 885 (2009). “In the final analysis, the interpretation of RCW 19.86.020 is left to the state courts.” *State v. Reader’s Digest Ass’n, Inc.*, 81 Wn.2d 259, 275, 501 P.2d 290 (1972). And where state law so clearly and intentionally diverges from its federal counterpart, as it does in this case, FTC decisions on deception should offer no application to this Court’s CPA analysis.

**A. To Establish Deception Under the CPA, Courts Need Only Legally Conclude That the Challenged Act or Practice Has a Capacity to Deceive.**

This Court has repeatedly held that deception under the CPA is a question of law while at the same time allowing “deception” to be liberally construed to cover the broadest number of business practices. *See, e.g., Klem*, 176 Wn.2d at 786 (“Given that there is ‘no limit to human inventiveness,’ courts . . . must be able to determine whether an act or practice is unfair or deceptive to fulfill the protective purposes of the CPA.”) (citation omitted); *Panag*, 166 Wn.2d at 47 (question of law whether act or practice is “unfair or deceptive” under the CPA); *Leingang v. Pierce Cty. Med. Bureau, Inc.*, 131 Wn.2d 133, 150, 930 P.2d 288 (1997) (same).

This Court has ruled that neither intent to deceive nor evidence of consumer reliance is required to establish a deceptive practice under the CPA. “A plaintiff need not show that the act in question was *intended* to

deceive, but that the alleged act had the *capacity* to deceive a substantial portion of the public.” *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 785, 719 P.2d 531 (1986) (citations omitted) (emphasis in original); *see also Panag*, 166 Wn.2d at 47 (same). The purpose of the capacity-to-deceive test is “to deter deceptive conduct *before* injury occurs.” *Hangman Ridge*, 105 Wn.2d at 785 (citation omitted) (emphasis in original). Thus, actual deception is not a requirement. *Id.*

Likewise, “[a] claimant need not prove consumer reliance” to establish deception. *State v. Ralph Williams’ North West Chrysler Plymouth, Inc.*, 87 Wn.2d 298, 317, 553 P.2d 423 (1976). Accordingly, this Court has based deception on information that *could be* of importance to a reasonable consumer rather than look for evidence of actual consumer reliance. *See Indoor Billboard/Washington, Inc. v. Integra Telecom of Wash., Inc.*, 162 Wn.2d 59, 74-75, 170 P.3d 10 (2007) (practice that had a capacity to deceive consumers that surcharge was FCC-required “could be of material importance to a customer’s decision to purchase the company’s services” and was deceptive); *Panag*, 166 Wn.2d at 47 (notices were deceptive because they “may induce people to remand payment under the mistaken belief they had a legal obligation to do so”); *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 592, 675 P.2d 193 (1983) (insurer’s unauthorized practice of law “certainly has the capacity for such

deception” since “[p]otential clients might readily and quite reasonably believe” the agents were legally qualified). In establishing these cases as precedent, this Court has made clear that deception under the CPA can be established even in the absence of evidence of consumer complaints about the deceptive acts or evidence of any particular consumer having relied on or placed importance on deceptive statements.

**B. Unlike the FTC Act, the CPA Does Not Require a Separate Finding of Materiality**

Materiality is not a separate element of a CPA claim. Neither the text of the CPA nor this Court’s leading decision on private CPA actions, *Hangman Ridge*, mentions or discusses materiality. Rather, the *Hangman Ridge* court set out its own specific, five-factor analysis establishing the required elements of a private CPA claim:

We hold that to prevail in a private CPA action and therefore be entitled to attorney fees, a plaintiff must establish five distinct elements: (1) unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in his or her business or property; (5) causation. . . . A successful plaintiff is one who establishes all five elements of a private CPA action.

*Hangman Ridge*, 105 Wn.2d at 780, 795. *See, e.g., Panag*, 166 Wn.2d at 37 (adopting analysis); *Indoor Billboard*, 162 Wn.2d at 74 (same). Since *Hangman Ridge*, the Legislature has amended the CPA but has not chosen to amend the required elements to include materiality. In 2009, the

Legislature added a new section to the CPA, RCW 19.86.093, which specifically discusses the public interest impact element. The Legislature is presumed to be aware of judicial interpretations of its enactments, *see, e.g., City of Federal Way v. Koenig*, 167 Wn.2d 341, 348, 217 P.3d 1172 (2009), including the “capacity to deceive” test this Court has developed for determining deceptiveness under the CPA, and the Legislature did not use this opportunity to require materiality as an element of a CPA claim. By requiring a separate showing of materiality, the Court of Appeals exceeded this Court’s *Hangman Ridge* analysis and imposed a sixth element on private CPA actions.<sup>2</sup>

In reviewing the acts of Respondent Toyota Motor Sales, U.S.A. (Toyota) for deception under the CPA, the Court of Appeals cited a state appellate case, which noted that “[i]mplicit in the definition of ‘deceptive’ is the understanding that the actor misrepresented something of material importance.” *Young v. Toyota Motor Sales, U.S.A.*, 9 Wn. App. 2d 26, 33, 442 P.3d 5 (2019) (citing *Hiner v. Bridgestone/Firestone, Inc.*, 91 Wn. App.

---

<sup>2</sup> This Court previously rejected a request to adopt a sixth element beyond the five-element *Hangman Ridge* test. *See Panag*, 166 Wn.2d at 38 & 46 (declining request to add proof of a consumer transaction between parties as an additional element of a private CPA claim “because it would unduly restrict the intended broad scope of the act and conflict with both its language and its purpose,” noting that “a ‘successful plaintiff’ is ‘one who establishes all five elements of a private CPA action’” under *Hangman Ridge* and stating “[w]e will not adopt a sixth element”) (citation omitted). Similarly here this Court should reject the Court of Appeals’ decision and decline Toyota’s request to expand the *Hangman Ridge* test by requiring a materiality element.

722, 730, 959 P.2d 1158 (1998) (emphasis omitted), *rev'd in part on other grounds*, 138 Wn.2d 248, 978 P.2d 505 (1999)). Toyota picks up on this slim quote from *Hiner* and spins it further: “[I]t has been well-settled law in the Washington Court of Appeals that a mistake must be ‘something of material importance’ to meet the *Hangman Ridge* standard.” Resp. Supp. Br. at 2. However, Toyota ignores the factual context of *Hiner* and the legal history of the CPA deception standard post-*Hangman Ridge*, both of which diminish *Hiner*’s relevance to the issues presented to this Court.

First, *Hiner* was a products liability case in which the court determined that where a seller “fail[ed] to reveal a material fact known to the seller . . . that the seller in good faith [was] bound to disclose,” the seller’s non-disclosure “may be classified an unfair or deceptive act due to its inherent capacity to deceive.” *Hiner*, 91 Wn. App. at 730. Here, the Court is not addressing whether an omission of fact known to a seller is material; rather, just the converse: Toyota marketed a feature on certain vehicles that was not actually included in the sale.

Second, *Hiner* does not represent the full picture of case law interpreting deception under the CPA, certainly not after *Hangman Ridge*. In support of the proposition that “[i]mplicit in the definition of ‘deceptive’ is the understanding that the actor *misrepresented* something of material importance,” *id.* (emphasis in original), the *Hiner* court cited but did not

directly quote *Potter v. Wilbur–Ellis Co.*, 62 Wn. App. 318, 327, 814 P.2d 670 (1991), another failure-to-disclose case. The *Potter* court itself noted that a pre-*Hangman Ridge* intermediate court had interpreted deception as follows:

‘A buyer and seller do not deal from equal bargaining positions when the latter has within his knowledge a material fact which, if communicated to the buyer, will render the goods unacceptable or, at least, substantially less desirable. Failure to reveal a fact which the seller is in good faith bound to disclose may generally be classified as an unfair or deceptive act due to its inherent capacity to deceive . . . .’

*Potter*, 62 Wn. App. at 327 (quoting *Testo v. Russ Dunmire Oldsmobile, Inc.*, 16 Wn. App. 39, 51, 554 P.2d 349 (1976)).

But the *Potter* court did not rely on *Testo* and instead continued: “[M]ore recent judicial interpretations have held that in order for conduct to be ‘unfair’ or deceptive it ‘must have a tendency or capacity to deceive a substantial portion of the public.’” *Potter*, 62 Wn. App. at 327 (citation omitted). Indeed, after *Hangman Ridge* was decided in 1986, Washington’s CPA case law on deception has turned on the capacity to deceive rather than materiality. *See, e.g., Thornell v. Seattle Serv. Bureau, Inc.*, 184 Wn.2d 793, 802, 363 P.3d 587 (2015); *Klem*, 176 Wn.2d at 803; *Panag*, 166 Wn.2d at 47; *Indoor Billboard*, 162 Wn.2d at 74-75; *Leingang*, 131 Wn.2d at 150. And yet, even the *Hiner* court did not hold that a separate finding of materiality was required to establish deception.

Rather than follow this Court's precedent on the "capacity to deceive," the Court of Appeals incorrectly analyzed deception this way: "[w]e need address only materiality to affirm the [trial] court's conclusion that Mr. Young failed to prove a deceptive act or practice . . . . [T]he [trial] court rejected Mr. Young's assertion that he, personally, was induced by the mistake to buy the limited package." *Young*, 9 Wn. App. at 35-36. Because this Court has never separately required a plaintiff to prove materiality, let alone demonstrate how a deceptive act or practice factored into a plaintiff's purchasing decision, the Court of Appeal's CPA analysis is fatally flawed.

**C. The Deception Standard Under the FTC Act Has No Application to the CPA.**

Given the significant differences in the statutory language, and in particular the explicit materiality requirement in the FTC Act which has no counterpart in the CPA, the Court of Appeals committed error when it adopted the FTC's deception standard, as restated in the FTC case *In the Matter of Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 1984 WL 565319 (1984) (citing FTC's 1983 Policy Statement on Deception): "The [FTC] will find an act or practice deceptive if, first, there is a representation, omission, or practice that, second, is likely to mislead consumers acting reasonably under the circumstances, and third the representation, omission, or practice is material." *See Young*, 9 Wn. App. 2d at 34-35.

However, the FTC’s deception standard is significantly different from the deception standard under the CPA. While Section 5 of the FTC Act, 15 U.S.C. § 45(a)(4)(A)(ii), specifically requires that a challenged act or practice must involve “material conduct,” as discussed *supra*, Part IV.B., neither the Washington legislature nor this Court has ever included materiality in the state’s CPA framework.

Further, in contrast to the CPA, the FTC Act has no liberal construction mandate. *Compare id.* §§ 41-58 with RCW 19.86.920; *see also Thornell*, 184 Wn.2d at 799 (“The legislature directed that the CPA ‘*shall be liberally construed*’ that its beneficial purposes may be served.”) (emphasis in original) (citing RCW 19.86.920). Federal jurisprudence also diverges greatly from state law in ruling that deception under the FTC Act is a factual question. *See FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006) (holding that deception under the FTC Act is a factual question) (cited in *Young*, 9 Wn. App. 2d at 34); *compare Panag*, 166 Wn.2d at 47 (whether act or practice is “unfair or deceptive” under the CPA is a question of law); *Leingang*, 131 Wn.2d at 150 (same).

Perhaps the most telling distinction between the two standards derives from this Court’s ruling in *Hangman Ridge*. When this Court developed the *Hangman Ridge* standard in 1986, which sets out the elements of a private CPA claim, it considered the FTC Act and indeed

referenced 15 U.S.C. § 45(a), which contains the federal materiality requirement. *Hangman Ridge*, 105 Wn.2d at 783. Materiality was then and remains still an express element of an FTC Act claim. See 15 U.S.C. § 45(a)(4)(A)(ii). By the time *Hangman Ridge* was decided, the FTC had also released its 1983 Policy Statement on Deception, which discussed materiality specifically. Despite being fully knowledgeable of the FTC’s materiality element, this Court did not include materiality as an element of a private CPA claim in *Hangman Ridge*.

The Court of Appeals cited *Cliffdale* as support for its decision to adopt the FTC standard without acknowledging the differences between the FTC Act and the CPA. Rather than require proof of materiality as a question of fact under the federal standard, the Court of Appeals should have addressed deception as a question of law under the state’s capacity to deceive standard. See *State v. LA Investors, LLC*, 2 Wn. App. 2d 524, 538-39, 410 P.3d 1183 (2018) (declining to follow federal courts and FTC Act in holding deception to be a question of fact and instead holding that deception is a question of law under the CPA), *review denied*, 190 Wn.2d 1023, 418 P.3d 796 (2018).

**D. A “Financial Materiality” Requirement Would Limit the Scope of the CPA, Contrary to Legislative Intent.**

The Attorney General urges this Court to reject the Court of

Appeals’ “financial materiality” analysis, which would prevent CPA enforcement in cases where misrepresentations have been made but only in small-dollar amounts. As to the mislabeling on the Monroney label on Mr. Young’s truck, the intermediate court said:

Toyota’s mistake was found to be *financially immaterial* because purchasers of the limited package were never charged for the \$10 temperature gauge. We 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. . . . 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*, 9 Wn. App. 2d at 38 (emphasis added).

The Court of Appeals’ analysis is erroneous. Whether a challenged act or practice has a capacity to deceive under the CPA is not based on actual evidence that consumers were induced to make purchases based in part on the deceptive statement<sup>3</sup>—and with good reason, as it would otherwise encourage companies to fill their marketing with “financially immaterial” misrepresentations, limited only by the reach of “human inventiveness.” *See Panag*, 166 Wn.2d at 48. If financial materiality were the predicate for establishing deception under the CPA, could a company lie about some

---

<sup>3</sup> Under the Court of Appeals’ analysis, what was supposed to be a question of law would devolve into questions of fact about whether and to what extent a misstatement could be financially material to a consumer in inducing him or her to make a purchase. As discussed *supra*, Part IV.A., capacity to deceive is a question of law and proof of actual consumer reliance is not required, whether for Mr. Young or for any other consumers impacted by the erroneous Monroney label. *Ralph Williams*, 87 Wn.2d at 317.

small fee that it was charging to hundreds of consumers, if those consumers could not otherwise present evidence that the misrepresentation was material to their overall purchasing decisions? Could a company slip in a misleading statement about a single service offered to consumers for free as part of a much larger and expensive bundled service package?

To be clear, the Attorney General does not suggest that *any* deceptive statement alone establishes a private CPA claim; to the contrary, each element of the five-element *Hangman Ridge* analysis must be met before a private plaintiff may establish a viable CPA action. A deceptive statement for which a plaintiff suffered no injury would not suffice. *See Young*, 9 Wn. App. 2d at 43 (Fearing, J., concurring) (“A lack of materiality will generally preclude recovery under the [CPA] because of the act’s fourth and fifth elements of injury and causation.”).

Yet when the Attorney General brings a CPA action, he does so on behalf of the State and must prove (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, and (3) public interest impact. *State v. Kaiser*, 161 Wn. App. 705, 719, 254 P.3d 850 (2011). If a challenged act or practice has a capacity to deceive, deception is established under the CPA, regardless of the financial magnitude of the deception. To forgive deceptive yet “financially immaterial” statements would be to allow certain deceptive practices to evade CPA enforcement by the Attorney General. This could

not have been the intent of the Legislature when it enacted the CPA to protect the public and foster fair and honest competition. RCW 19.86.920. It would also not allow the CPA to “be liberally construed [such] that its beneficial purposes may be served.” *Id.*

## V. CONCLUSION

Contrary to the Court of Appeals’ ruling, whether an act or practice is deceptive under the CPA is a question of law, not fact, and is determined under an objective standard based on whether the act or practice has a capacity to deceive. Washington courts need not make a separate finding of materiality in reaching that determination. Nor is there a “financial materiality” requirement or other minimum threshold of financial impact that must be met to establish deception. If a challenged act or practice has a capacity to deceive, a deceptive practice under the CPA has been established.

RESPECTFULLY SUBMITTED this 13th day of April, 2020.

ROBERT W. FERGUSON  
Attorney General

*s/ Matthew Geyman*

---

MATTHEW GEYMAN, WSBA #17544

AMY C. TENG, WSBA #50003

Assistant Attorneys General

Attorneys for the State of Washington

**CERTIFICATE OF SERVICE**

The undersigned certifies, under penalty of perjury under the laws of the State of Washington, that on the date below, I caused a true and correct copy of the foregoing to be served on the following:

- |                                 |                                     |                  |
|---------------------------------|-------------------------------------|------------------|
| Michael L. Mallow               | <input type="checkbox"/>            | Legal Messenger  |
| Rachel Straus                   | <input checked="" type="checkbox"/> | First-Class Mail |
| Mark D. Campbell                | <input type="checkbox"/>            | Email            |
| Shook Hardy & Bacon, LLP        | <input checked="" type="checkbox"/> | Appellate Portal |
| 2049 Century Park E., Ste. 3000 |                                     |                  |
| <br>                            |                                     |                  |
| Brian G. Cameron                | <input type="checkbox"/>            | Legal Messenger  |
| Cameron Sutherland, PLLC        | <input checked="" type="checkbox"/> | First-Class Mail |
| 421 W. Riverside Ave., Ste. 660 | <input type="checkbox"/>            | Email            |
| Spokane, WA 99201               | <input checked="" type="checkbox"/> | Appellate Portal |
| (509) 315-4507                  |                                     |                  |
| <br>                            |                                     |                  |
| Kirk D. Miller                  | <input type="checkbox"/>            | Legal Messenger  |
| Kirk D. Miller, P.S             | <input checked="" type="checkbox"/> | First-Class Mail |
| 421 W. Riverside Ave., Ste. 660 | <input type="checkbox"/>            | Email            |
| Spokane, WA 98201               | <input checked="" type="checkbox"/> | Appellate Portal |
| (509) 413-1494                  |                                     |                  |

DATED this 13th day of April, 2020 at Seattle, Washington.

s/ Angelina Boiko  
ANGELINA V. BOIKO  
Legal Assistant

# CONSUMER PROTECTION DIVISION AGO

April 13, 2020 - 10:53 AM

## Transmittal Information

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

### The following documents have been uploaded:

- 975761\_Briefs\_20200413104035SC370207\_8944.pdf  
This File Contains:  
Briefs - Amicus Curiae  
*The Original File Name was 2020\_04\_13AmicusBrief.pdf*
- 975761\_Motion\_20200413104035SC370207\_1636.pdf  
This File Contains:  
Motion 1 - Amicus Curiae Brief  
*The Original File Name was 2020\_04\_13SecondMtnforAmicus.pdf*

### A copy of the uploaded files will be sent to:

- Angelina.Boiko@atg.wa.gov
- CBORN@CAMERONSUTHERLAND.COM
- Mmallow@shb.com
- amy.teng@atg.wa.gov
- bcameron@cameronsutherland.com
- hhedeen@shb.com
- jsingleton@cameronsutherland.com
- kmiller@millerlawspokane.com
- mdcampbell@shb.com
- rstraus@shb.com
- scottk@nwjustice.org

### Comments:

---

Sender Name: Michelle Baczkowski - Email: michelleb1@atg.wa.gov

**Filing on Behalf of:** John Matthew Geyman - Email: matt.heyman@ATG.WA.GOV (Alternate Email: cpreader@atg.wa.gov)

Address:  
800 Fifth Ave  
Suite 2000  
Seattle, WA, 98133  
Phone: (206) 464-7745

**Note: The Filing Id is 20200413104035SC370207**