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MODEL CASE AGAINST VW UPCOMING:

Federation of German Consumer Organisations (vzbv) and ADAC e.V. launch court action against Volkswagen AG

- On 1 November 2018, vzbv will bring a model case action against Volkswagen AG in cooperation with ADAC e.V.
- The aim is to have a legally binding declaratory judgement that Volkswagen, with their software manipulation, deliberately and unethically caused damage to their customers and now owe redress to affected buyers.
- The model case lawsuit addresses Volkswagen, Audi, Škoda and Seat branded vehicles with EA 189 diesel engines.

Almost exactly three years after the VW diesel emissions scandal broke, the Federation of German Consumer Organisations (vzbv) have announced a model case action seeking a declaratory judgment against Volkswagen AG. The plan is to file a lawsuit in cooperation with ADAC e.V. on 1 November 2018, the day the new German collective action regime will enter into force, representatives of both organisations announced on Wednesday at the Federal Press Conference in Berlin. The aim of the action is to have a legally binding declaratory judgement that Volkswagen, with their software manipulation, deliberately and unethically caused damage and now owe redress to affected buyers. Buyers of Volkswagen, Audi, Škoda and Seat branded vehicles with EA 189 diesel engines that were subject to recall can join the model case.

“Filing the model case action for declaratory judgment is pioneering work for the Federation of German Consumer Organisations”, says vzbv Executive Director Klaus Müller. “The legislator has provided us with a new type of legal means which we are using without delay so that consumers are no longer left alone with their damages. In cooperation with Germany’s largest mobility club ADAC e.V. we want to lay the foundations for consumers to receive the compensation they are due.”

“For us at ADAC it is logical to support and promote the practical use of this new type of action, in the interest of our members and the consumers. Bundling the potential of two powerful consumer organisations will be more effective here instead of filing two separate lawsuits. This is why we agreed to jointly undertake Germany’s first model case action for declaratory relief to best serve consumer interests”, explains Dr August Markl, President of ADAC e.V.

OBJECTIVES OF THE ACTION

vzbv's aim is to have a legally binding declaratory judgement that the Volkswagen group, with their software manipulation, deliberately and unethically caused damage. As the plaintiffs see it, the affected vehicles should never have been placed on the market and the group should therefore be liable to pay compensation. Subsequently, it would be a matter of clarifying whether or not buyers should be refunded the purchase price in full or minus a loss-of-use indemnification and whether or not the manufacturer is in fact liable for damages.

The competent court to hear the case is the Braunschweig Higher Regional Court (OLG). Buyers of Volkswagen, Audi, Škoda and Seat branded vehicles with EA 189 (1.2l, 1.6l or 2.0l 4-cylinder) diesel engines that were subject to a recall can join the model case free of charge. The vehicles must have been purchased on or after 1 November 2008.

MODEL CASE PROCEEDINGS A NEW LEGAL SWORD

“With the model case proceedings for declaratory judgment we are entering unknown legal territory. Since a similar judicial option has so far not been available in Germany, the prospects of success are as yet more difficult to assess than in other cases. Courts all over Germany have so far reached different decisions in individual lawsuits when it came to software manipulation”, ADAC President Dr Markl points out.

Counsel for the plaintiff will be R/U/S/S/, an association of the law firms Rogert & Ulbrich and Dr Stoll & Sauer. “Both law firms succeeded in winning hundreds of cases for their clients enforcing their right to return the affected vehicles. In addition, Rogert & Ulbrich were the first law firm in Germany to win a fraud case against Volkswagen AG. Against this background, our action will be backed by the best expertise and experience available”, adds vzbv Executive Director Müller.

Prior to joining the model case proceedings for declaratory judgment, affected consumers should verify whether they would be better off entering the model case action's litigation register or proceeding individually: “vzbv's model case action is an interesting option especially for those affected buyers who have decided against bringing individual charges in order to avoid the risk and cost of litigation or who have no legal expenses cover”, the lawyers say. Joining the model case is free of charge for consumers. Plus, there is no cost risk involved and the running of limitations periods will be suspended. A judgment in favour of the affected consumers would also increase the pressure on the Volkswagen group to finally make concessions for the benefit of their customers.

HOW DOES GROUP LITIGATION WORK?

Consumers who want to join the model case lawsuit need to sign up in the litigation register which the German Federal Office of Justice will set up after 1 November 2018. For a model case action to be admissible, a minimum of 50 affected consumers must have validly registered. If the court declares in their favour, consumers need to enforce their own individual claims. Interested consumers need not act until the court has opened the litigation register.

Preliminary consumer information on the model case lawsuit against Volkswagen is available (in German) at

www.musterfeststellungsklagen.de

www.verbraucherzentrale.de

You can also sign up to this website for important information by e-mail.

For FAQs on the test case lawsuit click here:

<https://www.vzbv.de/meldung/musterfeststellungsklage-fragen-und-antworten-0>

<http://adac.de/musterfeststellungsklage>

In addition, vzbv and ADAC operate the helplines below:

vzbv: Phone: 030 32 50 27 00 (Mon to Fri between 09:00 and 17:00hrs)

ADAC: Phone: 089 76 76 24 33 (ADAC members only)

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