

Complaint

IN THE MATTER OF

LITHIA MOTORS, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4597; File No. 152 3102**Complaint, December 8, 2016 – Decision, December 8, 2016*

This consent order addresses Lithia Motors, Inc.'s failure to disclose open recalls for safety issues. The complaint alleges that respondent has represented that the used motor vehicles it sells have been subject to rigorous inspection, including for safety issues, but has failed to disclose that the used motor vehicles it sells are subject to open recalls for safety issues. The consent order prohibits the respondent from representing that used motor vehicles it offers for sale are safe, have been repaired for safety issues, or have been subject to an inspection for issues related to safety unless the used motor vehicles are not subject to any open recalls for safety issues or the respondent discloses, clearly and conspicuously, in close proximity to such representation, any material qualifying information related to open recalls for safety issues.

Participants

For the *Commission*: Courtney Estep, Peter Lamberton, Michael White, and Evan Zullow.

For the *Respondents*: Mike Goodman, Lucy Morris, and Joel Winston, Hudson Cook LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Lithia Motors, Inc., a corporation ("Respondent"), has violated provisions of the Federal Trade Commission Act ("FTC Act"), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is an Oregon corporation with its principal office or place of business at 150 North Bartlett Street, Medford OR 97591. Respondent has marketed, advertised, offered for sale, and sold used motor vehicles.

Complaint

2. The acts or practices of Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

3. Since at least January 2015, Respondent has disseminated or has caused to be disseminated advertisements promoting the sale of used motor vehicles.

4. Respondent’s advertisements include, but are not necessarily limited to, advertisements and marketing materials posted on the website www.lithia.com, excerpts of which are attached as Exhibits A through D. On its website, on a page prominently touting the features of the dealer-backed, Lithia “60 Day/3,000 Mile” warranty Lithia claims that its “60 Day/3,000 Mile vehicles are put through an exhaustive 160-checkpoint Quality Assurance Inspection.” It goes on to state, “We want the vehicles to look, feel and smell as new as possible. We inspect everything from the tires and the brakes to suspension, drive train, engine components and even the undercarriage. Only vehicles that pass all 160 checkpoints (as appropriate to vehicle content) can receive our 60 Day/3,000 miles Limited Warranty.”

Exhibit A.

5. Even though it makes the claims set forth in Paragraph 4, Respondent has advertised numerous used “60 Day/3,000 Mile” vehicles with open recalls for safety issues on its website.

6. In some instances, these open recalls for safety issues have included recalls for defects that can cause serious injury. For example, Respondent has advertised used “60 Day/3,000 Mile” vehicles that have an open recall for safety issues for a key ignition switch defect, which can affect engine power, power steering, power braking, and airbag deployment, thereby increasing the risk of a crash and occupant injury. Respondent also has advertised used vehicles that have an open recall for safety issues for a side impact air bag wiring harness defect, which could result in the failure of side impact airbags and seat belt pretensioners to deploy in a crash, increasing the risk of injury.

Complaint

7. In numerous instances, when Respondent has advertised used “60 Day/3,000 Mile” vehicles that are subject to open recalls for safety issues making the claims set forth in Paragraph 4, it has provided no accompanying clear and conspicuous disclosure of this fact.

8. When consumers search for particular categories of vehicles on Respondent’s website, there is no disclosure regarding open recalls for safety issues. An example of such search results includes the following:

The screenshot shows the Lithia Auto Stores website interface. At the top, there's a navigation bar with links like Home, Vehicles, Service, Body Shops, Specials, Videos, About Us, Store Locator, and Careers. Below this is a search bar and a 'Search Inventory' button. The main content area is titled 'Inventory' and shows search results for '3 Items Matching: Year: 2011 Make: Chrysler'. The results are sorted by Year, Color, Mileage, and Price. Three vehicle listings are displayed:

- 2011 Chrysler 200 Touring Sedan**: Price: \$12,999. Engine: 3.6L V4 cyl, Transmission: AUTOMATIC, Mileage: 61,345 miles, Exterior Color: Sapphire Crystal Met, VIN: 1C3BC1P66BN36374. Location: Lithia Dodge of Las Cruces.
- 2011 Chrysler 300C Base Sedan**: Price: \$21,995. Engine: 3.7L V4 cyl, Transmission: 5 speed automatic, Mileage: 57,755 miles, Exterior Color: Silver, VIN: 2C3CACT1B691403. Location: Lithia Chrysler Jeep Dodge of Eureka.
- 2011 Chrysler Town & Country Touring Van LWB Passenger Van**: Price: \$19,998. Engine: 3.6L V4 cyl, Transmission: AUTOMATIC, Mileage: 35,745 miles, Exterior Color: Stone White, VIN: 2A4RP62G22R36327. Location: Lithia Ford Lincoln of Fresno.

Each listing includes a 'Watch Video' link, a 'Save This Car!' button, and a 'Get Price Alerts' button. There are also '60 DAY' and '3,000 MILE' badges. The bottom of the page shows a 'Condition' filter set to 'Pre-Owned (3)'.

Exhibit B.

9. When consumers view specific vehicle listings on Respondent’s website, there is no disclosure of open recalls for safety issues. An example of such a listing with an open safety recall includes the following:

Complaint




[Home](#)
[Vehicles](#)
[Service](#)
[Body Shops](#)
[Specials](#)
[Videos](#)
[About Us](#)
[Store Locator](#)
[Careers](#)

2013 Chevrolet Cruze LTZ Sedan

[Back To Inventory](#)

Submit our "Get ePrice" form below for great pricing online!



Price **\$15,995**

Your estimated monthly payment:
\$253 per month

60 Months @ 6.9% A.P.R. (estimated financing rate)
(\$3,100 Down Payment)

 **40 DAY**
100% MONEY BACK
3,000 MILE

Share    

841 0

Location

Lithia Kia of Anchorage
4434 Old Seward Highway
Anchorage, AK 99503
Sales: 877-475-1723

Map



Similar



2013 Chevrolet Sonic LTZ Auto Hatchback
\$12,995



2012 Chevrolet Traverse 1LT SUV
\$19,495



2014 Chevrolet Impala Limited LTZ Sedan
\$17,961

Overview **Tech Specs** **Warranty**

Year: 2013

Make: Chevrolet

Model: Cruze

Trim: LTZ

Bodystyle: Sedan

Doors: 4 door

Mileage: 23,534 miles

Engine: 1.4L I-4 cyl

Transmission: AUTOMATIC

Drive Line: Front wheel Drive

Fuel Type: regular unleaded

Exterior Color: Silver Ice

Interior Color: JET BLACK

VIN: 1G1PG5SB1D7264534

Model Code: 1PW09

Stock #: D7264534

Fuel Efficiency Rating

City MPG: **26**  Highway MPG: **38**

Actual rating will vary with options, driving conditions, habits and vehicle condition.

Complaint

Comments: ONLY 23,505 Miles! PRICED TO MOVE \$800 below Kelley Blue Book!, EPA 38 MPG Hwy/26 MPG City! Heated Leather Seats, CD Player, iPod/MP3 Input, Remote Engine Start, Onboard Communications System, Turbo Charged, Aluminum Wheels SEE MORE!

KEY FEATURES INCLUDE

Leather Seats, Heated Driver Seat, Back-Up Camera, Turbocharged, Satellite Radio, iPod/MP3 Input, CD Player, Onboard Communications System, Aluminum Wheels, Remote Engine Start, Heated Seats, Heated Leather Seats MP3 Player, Keyless Entry, Child Safety Locks, Steering Wheel Controls, Heated Mirrors. LTZ with SILVER ICE METALLIC exterior and JET BLACK interior features a 4 Cylinder Engine with 138 HP at 4900 RPM*.

EXPERTS ARE SAYING

CarAndDriver.com explains The Cruze brings a compelling mix of elegant styling and fuel economy to the compact-car ranks... Great Gas Mileage: 38 MPG Hwy.

A GREAT VALUE

AutoCheck One Owner This Cruze is priced \$800 below Kelley Blue Book.

WHO WE ARE

By taking a page from Kia themselves, Lithia Kia of Anchorage challenges many consumers' perspective of exactly what is the quintessential car-buying experience. When you visit Lithia Kia of Anchorage for complete car specs or to take a test drive, you'll find we deliver an extensive product lineup, deft service and auto repair, and perhaps most importantly - a one-of-a-kind mix of professionalism and approachability. Stop by and see us today!

Pricing analysis performed on 12/10/2014. Horsepower calculations based on trim engine configuration. Fuel economy calculations based on original manufacturer data for trim engine configuration. Please confirm the accuracy of the included equipment by calling us prior to purchase.

* While every reasonable effort is made to ensure the accuracy of this information, we are not responsible for any errors or omissions contained on these pages. Please verify any information in question with Lithia Auto Stores.

User Reviews

Nothing posted yet.

Post a Review

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website by
DEALER.COM

Exhibit C

Complaint

10. Another example of a listing for a vehicle with an open safety recall appears as follows:

Used 2013 Chevrolet Camaro For Sale in Midford | D9119687A - Internet Explorer

http://www.lithia.com/used/ Used 2013 Che... CARFAX Vehicle... CARFAX Vehicle... Recall Results Lo...

Login 5 Recently Viewed Cars 0 Saved Cars 0 Price Alerts Contact Social Info Hide

2013 Chevrolet Camaro 1SS Coupe

Submit our "Get ePrice" form below for great pricing online!

Photos Video 360°

432-522-3115

\$26,999

Get ePrice

Your estimated monthly payment: **\$427** per month

60 Months @ 6.9% A.P.R. (estimated financing rate)
(\$5,300 Down Payment)

Calculate another payment

Save This Car! Get Price Alerts

CARFAX 1 OWNER

48 DAY (actual mileage) 12,588 MILE

Overview Tech Specs Warranty

Year: 2013
Make: Chevrolet
Model: Camaro
Trim: 1SS
Bodystyle: Coupe
Doors: 2 door
Mileage: 14,123 miles
Engine: 6.2L V-8 cyl
Transmission: 6 speed manual
Drive Line: Rear-wheel Drive
Fuel Type: premium unleaded
Exterior Color: Black
Interior Color: N/A

Fuel Efficiency Rating

City MPG: **16** Hwy MPG: **24**

Actual rating will vary with options, driving conditions, habits and vehicle condition.

Share f t e

Finance Your Vehicle
Request More Info
Make An Offer
Schedule a Test Drive
Trade-In Value

Location

All American Chrysler Jeep
Dodge of Midland
3801 W Wall St
Midland, TX 79703
Sales: 877-475-1816

Map

Get Directions

Similar

2012 Chevrolet Colorado Truck Crew Cab \$23,999 View Details

2013 Chevrolet Camaro ZL1 Coupe \$45,999 View Details

2014 Chevrolet Camaro LT w/1LT Coupe View Details

http://www.lithia.com/used/Chevrolet/2013-Chevrolet-Camaro--99c7cbcf9a0a0e0351600b...

Exhibit D.

11. To uncover any information about open recalls for safety issues through Respondent's website, a consumer viewing a listing such as the one shown in Paragraph 10 would have to locate and click on the "Carfax" links on the search results page or the vehicle listing page to access a vehicle history report. In other instances, such as the listing shown in Paragraph 9, the vehicle history report contains no information about open recalls for safety issues.

Complaint

**VIOLATION OF THE FEDERAL TRADE COMMISSION
ACT****Count I**

12. In connection with the marketing, advertising, offering for sale, or sale of used motor vehicles, Respondent has represented, directly or indirectly, expressly or by implication, that used motor vehicles it sells have been subject to rigorous inspection, including for safety issues.

13. In numerous instances in connection with the representation set forth in Paragraph 12, Respondent has failed to disclose, or disclose adequately, that used vehicles it sells are subject to open recalls for safety issues.

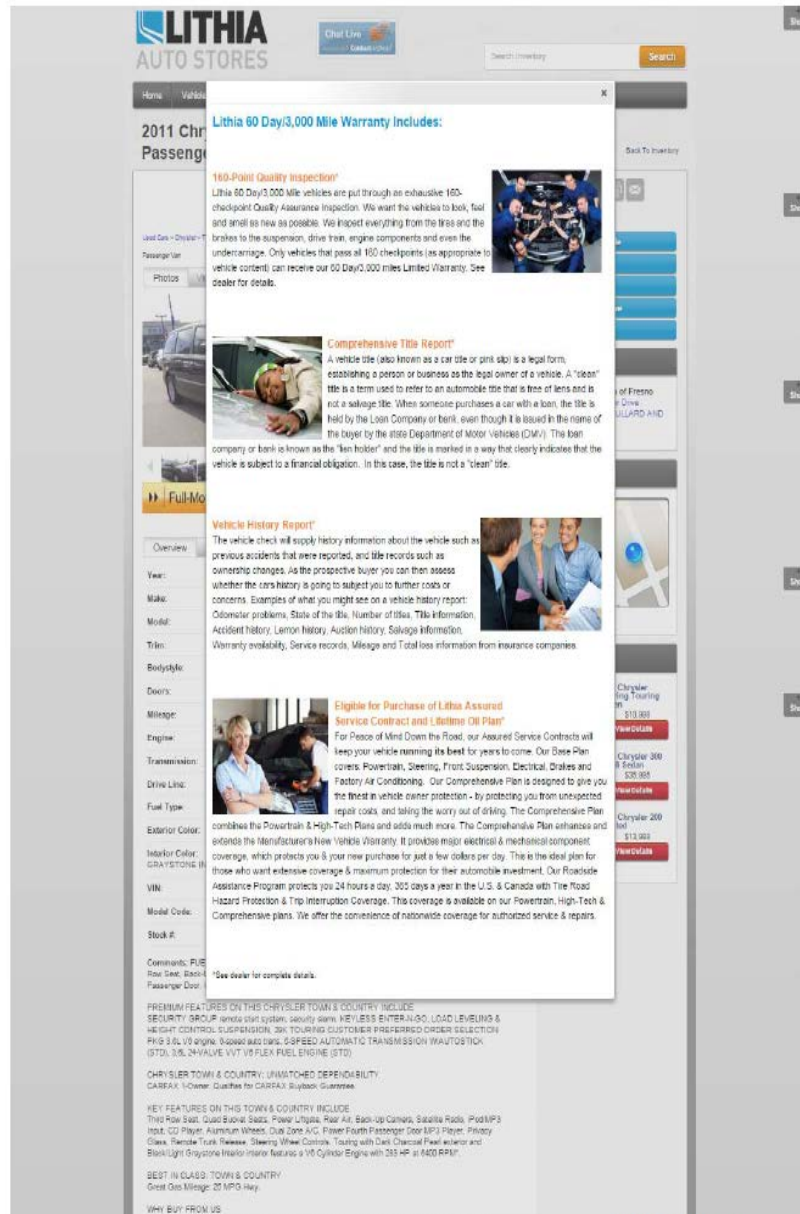
14. Respondent's failure to disclose, or disclose adequately, the material information set forth in Paragraph 13 above, in light of the representation described in Paragraph 12, above, constitutes a deceptive act or practice in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THEREFORE, the Federal Trade Commission, this eighth day of December, 2016, has issued this complaint against Respondent.

By the Commission.

Complaint

Exhibit A



Complaint

Exhibit B

LITHIA AUTO STORES

Chat Live
Search Inventory

Home Vehicles Service Body Shops Specials Videos About Us Store Locator Careers

Inventory

3 Items Matching: Year: 2011 Make: Chrysler

Sort by: Year Color Mileage Price Page 1 of 1

2011 Chrysler 200 Touring Sedan Price: **\$12,999** Get offer

Engine: 3.6L V6 24V
Transmission: AUTOMATIC
Mileage: 15,340 Miles
Exterior Color: Silver
Interior Color: Black
VIN: 1C3CCH0G6N0000074

3 VIDEOS VIDEOS
Save This Car
Get Price Alerts

2011 Chrysler 300C Base Sedan Price: **\$21,995** Get offer

Engine: 3.6L V6 24V
Transmission: 5 Speed Automatic
Mileage: 17,100 Miles
Exterior Color: Silver
Interior Color: Black
VIN: 2C3CACT1800000000

3 VIDEOS VIDEOS
Save This Car
Get Price Alerts

2011 Chrysler Town & Country Touring Van LWB Passenger Van Price: **\$19,998** Get offer

Engine: 3.6L V6 24V
Transmission: AUTOMATIC
Mileage: 28,710 Miles
Exterior Color: Stone White
Interior Color: Black
VIN: 2A4PR0G0600000000

3 VIDEOS VIDEOS
Save This Car
Get Price Alerts

Compare Selected Download All Page 1 of 1

Search

All Conditions
2011 (3)
Chrysler (3)
All Models
All Body Styles
All Mileage
All Prices
All Locations
All States
Zip Code
Mileage Range: Any Range
Search

Location

Lithia Chrysler Jeep Dodge of Euless (1)
Lithia Dodge of Las Cruces (1)
Lithia Ford Lincoln of Phoenix (1)

Condition

Pre-Owned (3)

Model

200 (1)
300C (1)
Town & Country (1)

Body Style

Sedan (3)
Van LWB Passenger Van (1)

Mileage

45,000 or less (1)
50,000 or less (1)
60,000 or less (2)
70,000 or less (2)
80,000 or less (3)
90,000 or less (2)
100,000 or less (3)

Price

\$10,000 - \$15,999 (2)
\$20,000 - \$25,999 (1)

Features

3rd Row Seat (1)
Adjustable Pedals (2)
Fog Lights (2)
Heated Seats (1)
Leather Seats (1)
Memory Seats (1)
Navigation System (1)
Parking Sensors / Assist (1)
Power Seats (2)

Complaint

Rain Sensing Wipers (2)
View More...

State

California (2)
New Mexico (1)

New Chrysler, Toyota, Jeep, Subaru and Honda in Medford
Lithia Auto Stores has the new Chrysler, Toyota, Jeep, Subaru or Honda in Medford you've been dreaming of. With models like the Chrysler 200, Camry, Civic, Impreza and Wrangler, we are confident we have the new car, truck, van or SUV you desire. We will even help with your auto loan in Medford.

New Chrysler 200, Camry, Civic, Impreza and Wrangler in Medford
If a used car is what you desire, Lithia Auto Stores can help you out. We have a large in-stock selection of pre-owned vehicles in Medford and invite you in for a test drive today. If you still don't see the car of your dreams, fill out our Carfinder form and we'll let you know when we locate your desired auto.

CareersLithiaAutoLithia PrivacyInvestor RelationsCA Supply Chain DisclosureCorporate SustainabilityCustomer Service

© 2016 Lithia Motors, Inc.

Complaint

Exhibit C




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[Videos](#)
[About Us](#)
[Store Locator](#)
[Careers](#)

2013 Chevrolet Cruze LTZ Sedan

[Back To Inventory](#)

Submit our "Get ePrice" form below for great pricing online!



Price **\$15,995**

[Get ePrice](#)

Your estimated monthly payment:
\$253 per month

60 Months @ 6.9% A.P.R. (estimated financing rate)
(\$3,100 Down Payment)
[Calculate another payment](#)

[Save This Car!](#)

[Get Price Alerts](#)

 **60 DAY**
UNFINISHED BUSINESS
3,000 MILE

Share    

8110

[Finance Your Vehicle](#)

[Request More Info](#)

[Make An Offer](#)

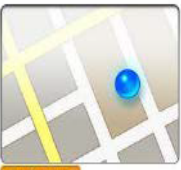
[Schedule a Test Drive](#)

[Trade-In Value](#)

Location

Lithia Kia of Anchorage
4434 Old Seward Highway
Anchorage, AK 99503
Sales: 877-475-1723

Map



[Get Directions](#)

Similar



2013 Chevrolet Sonic LTZ Auto Hatchback
\$12,995
[View Details](#)



2012 Chevrolet Traverse 1LT SUV
\$19,495
[View Details](#)



2014 Chevrolet Impala Limited LTZ Sedan
\$17,961
[View Details](#)

[Overview](#) [Tech Specs](#) [Warranty](#)

Year: 2013

Make: Chevrolet

Model: Cruze

Trim: LTZ

Bodystyle: Sedan

Doors: 4 door

Mileage: 23,534 miles

Engine: 1.4L I-4 cyl

Transmission: AUTOMATIC

Drive Line: Front-wheel Drive

Fuel Type: regular unleaded

Exterior Color: Silver Ice

Interior Color: JET BLACK

VIN: 1G1PG5SB1D7264534

Model Code: 1PW89

Stock #: D7264534

Fuel Efficiency Rating

City MPG: **26**  Highway MPG: **38**

Actual rating will vary with options, driving conditions, habits and vehicle condition.

Complaint

Comments: ONLY 23,505 Miles! PRICED TO MOVE \$800 below Kelley Blue Book! EPA 38 MPG Hwy/26 MPG City! Heated Leather Seats, CD Player, iPod/MP3 Input, Remote Engine Start, Onboard Communications System, Turbo Charged, Aluminum Wheels SEE MORE!

KEY FEATURES INCLUDE

Leather Seats, Heated Driver Seat, Back Up Camera, Turbocharged, Satellite Radio, iPod/MP3 Input, CD Player, Onboard Communications System, Aluminum Wheels, Remote Engine Start, Heated Seats, Heated Leather Seats MP3 Player, Keyless Entry, Child Safety Locks, Steering Wheel Controls, Heated Mirrors. LTZ with SILVER ICE METALLIC exterior and JET BLACK interior features a 4 Cylinder Engine with 138 HP at 4900 RPM*.

EXPERTS ARE SAYING

CarAndDriver.com explains The Cruze brings a compelling mix of elegant styling and fuel economy to the compact-car ranks... Great Gas Mileage: 38 MPG Hwy.

A GREAT VALUE

AutoCheck One Owner This Cruze is priced \$800 below Kelley Blue Book.

WHO WE ARE

By taking a page from Kia themselves, Lithia Kia of Anchorage challenges many consumers' perspective of exactly what is the quintessential car-buying experience. When you visit Lithia Kia of Anchorage for complete car specs or to take a test drive, you'll find we deliver an extensive product lineup, deft service and auto repair, and perhaps most importantly - a one-of-a-kind mix of professionalism and approachability. Stop by and see us today!

Pricing analysis performed on 12/10/2014. Horsepower calculations based on trim engine configuration. Fuel economy calculations based on original manufacturer data for trim engine configuration. Please confirm the accuracy of the included equipment by calling us prior to purchase.

* While every reasonable effort is made to ensure the accuracy of this information, we are not responsible for any errors or omissions contained on these pages. Please verify any information in question with Lithia Auto Stores.

User Reviews

Nothing posted yet!

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website by
DEALERCRM

Decision and Order

Exhibit D

Used 2013 Chevrolet Camaro For Sale in Midland | 0913887A - Internet Explorer

http://www.ithia.com/used/... Used 2013 Che... CARFAX Vehicle... CARFAX Vehicle... Recalls: Results Lo...

Login 5 Recently Viewed Cars 0 Saved Cars 0 Price Alerts Contact Social Info Hide

2013 Chevrolet Camaro 1SS Coupe

Back To Inventory

Submit our "Get a Price" form below for great pricing online!

Photos Video 360°

432-522-3115

\$26,999

Get ePrice

Your estimated monthly payment:
\$427 per month

20 Months @ 6.9% A.P.R. (automated financing rate)
(\$6,900 Down Payment)

Calculate another payment

Save This Car

Get Price Alerts

CARFAX 1 OWNER

60 DAY

AutoCheck

Finance Your Vehicle

Request More Info

Make An Offer

Schedule a Test Drive

Trade-In Value

Location

All American Chrysler Jeep Dodge of Midland
3801 W Wall St
Midland, TX 79703
Sales: 877-475-1916

Map

Get Directions

Similar

2012 Chevrolet Colorado Truck Crew Cab \$23,999 View Details

2013 Chevrolet Camaro ZL1 Coupe \$46,999 View Details

2014 Chevrolet Camaro LT w/1LT

Overview Tech Specs Warranty

Year: 2013

Make: Chevrolet

Model: Camaro

Trim: 1SS

Bodystyle: Coupe

Doors: 2 door

Mileage: 14,123 miles

Engine: 6.2L V-8 cyl

Transmission: 6 speed manual

Drive Line: Rear-wheel Drive

Fuel Type: premium unleaded

Exterior Color: Black

Interior Color: N/A

Fuel Efficiency Rating

City MPG: **16** Hwy MPG: **24**

Actual rating will vary with options, driving conditions, habits and vehicle condition.

http://www.ithia.com/used/Chevrolet/2013-Chevrolet-Camaro-09c7d0f0a0a00e0151600b...

DECISION

The Federal Trade Commission ("Commission") initiated an investigation of certain acts and practices of the Respondent named in the caption. The Commission's Bureau of Consumer Protection ("BCP") prepared and furnished to Respondent a draft Complaint. BCP proposed to present the draft Complaint to the

Decision and Order

Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondent with violation of the Federal Trade Commission Act.

Respondent and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statement by Respondent that it admits the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. Respondent Lithia Motors, Inc. is an Oregon corporation, with its principal office or place of business at 150 North Bartlett Street, Medford OR 97591.
2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

Decision and Order

- A. Unless otherwise specified, “Respondent” shall mean Lithia Motors, Inc., and its successors and assigns.
- B. “Advertisement” shall mean a commercial message in any medium that directly or indirectly promotes a consumer transaction.
- C. “Clearly and conspicuously” shall mean that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
 - 1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be made through the same means through which the representation requiring the disclosure is presented.
 - 2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
 - 3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
 - 4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
 - 5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

Decision and Order

6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
 7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
- D. “Material” shall mean likely to affect a person’s choice of, or conduct regarding, goods or services.
- E. “Motor vehicle” shall mean:
1. Any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;
 2. Recreational boats and marine equipment;
 3. Motorcycles;
 4. Motor homes, recreational vehicle trailers, and slide-in campers; and
 5. Other vehicles that are titled and sold through dealers.

I.

IT IS HEREBY ORDERED that Respondent and its officers, agents, representatives, and employees, directly or indirectly, in connection with the marketing, advertising, offering for sale, or sale of used motor vehicles to consumers shall not, in any manner, expressly or by implication:

- A. Represent that used motor vehicles that Respondent offers for sale are safe, have been repaired for safety issues, or have been subject to an inspection for issues related to safety unless:

Decision and Order

1. The used motor vehicles are not subject to any open recalls for safety issues, and the representation is otherwise not misleading, or
2. Respondent discloses, clearly and conspicuously, and in close proximity to such representation, any material qualifying information related to open recalls for safety issues, including but not limited to:
 - a. the fact that its used motor vehicles may be subject to unrepaired recalls for safety issues, and
 - b. how consumers can determine whether an individual motor vehicle is subject to an open recall for a safety issue that has not been repaired,

and the representation is otherwise not misleading. *Provided further that* if Respondent receives any written notification from a manufacturer that an individual used motor vehicle is subject to an open recall for a safety issue, Respondent must clearly and conspicuously provide that written notification, or a document that conveys the same information using a substantially similar format, to the consumer prior to consummation of the sale of that motor vehicle.

B. Misrepresent the following:

1. Whether there is or is not an open recall for safety issues for any used motor vehicle;
2. Whether Respondent repairs used motor vehicles for open recalls for safety issues; and
3. Any other material fact about the safety of the used motor vehicles it advertises for sale.

Decision and Order

II.

IT IS FURTHER ORDERED that Respondent, no later than February 6, 2017, must provide, by first class mail to the last known address of every consumer who purchased a Lithia Warranty used motor vehicle from Respondent between July 1, 2013 and December 8, 2016, a notice on Respondent's letterhead that clearly and conspicuously discloses the following:

“We want to alert you that some of the used vehicles we recently sold had been recalled for safety issues, but weren't repaired as of the date they were sold. You can check whether the vehicle you bought from us is subject to an unrepaired recall at the National Highway Traffic Safety Administration's recall website, <https://vinrcl.safercar.gov/vin/>. That site also provides information on how to get your vehicle fixed if it's been recalled.”

Respondent shall not include any advertising, marketing, or other promotional information in the notice. Moreover, the mailing shall not include any other documents. The envelope enclosing the notice shall have printed thereon in a clear and conspicuous fashion the disclosure “Important Safety Recall Information.”

Provided, however, that Respondent is not required to provide this notice for (A) any motor vehicle that Respondent can demonstrate was not subject to an open recall for a safety issue at the time of purchase and delivery, or (B) any motor vehicle that was the subject of one or more open recalls for safety issues at the time of purchase and delivery that Respondent can demonstrate have subsequently been fixed.

For purposes of Subpart (A) of this proviso, records showing that the vehicle was not listed as subject to an open recall for a safety issue, as of the date of the purchase, on the Original Equipment Manufacturer's recall database, on the National Highway Traffic Safety Administration's www.safercar.gov database, or on a database with information on vehicle recalls that is generally accepted based on the expertise of professionals in the relevant

Decision and Order

area to yield accurate and reliable results, shall be deemed to be sufficient to demonstrate that the vehicle was not subject to an open recall for a safety issue at the time of purchase and delivery.

For purposes of Subpart (B) of this proviso, (i) repair records generated by the dealer in the ordinary course of business that demonstrate that a vehicle with an open recall for a safety issue has been repaired; or (ii) records showing that the vehicle is no longer listed as subject to an open recall for a safety issue on the Original Equipment Manufacturer's recall database, on the National Highway Traffic Safety Administration's www.safercar.gov database, or on a database with information on vehicle recalls that is generally accepted based on the expertise of professionals in the relevant area to yield accurate and reliable results, shall be deemed sufficient to demonstrate that an open recall for a safety issue has been fixed.

For the purposes of this provision, "Lithia Warranty" shall mean used vehicles subject to Lithia's 60 Day/3,000 Mile Limited Warranty.

III.

IT IS FURTHER ORDERED that Respondent shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Commission for inspection and copying:

- A. Each advertisement or other marketing material that makes any representation covered by the order unless, in comparison to an advertisement or other marketing material already maintained by Respondent pursuant to this Section, the advertisement or marketing material: (i) is a duplicate, or (ii) differs only in the description of the vehicle in ways not related to any representations covered by this order;
- B. All materials that were relied upon in disseminating the representation;

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- C. All evidence in its possession or control that contradicts, qualifies, or calls into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations; and
- D. Any documents reasonably necessary to demonstrate full compliance with each provision of this order, including but not limited to all documents obtained, created, generated, or that in any way relate to the requirements, provisions, or terms of this order, and all reports submitted to the Commission pursuant to this order.

IV.

IT IS FURTHER ORDERED that Respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order, with any electronic signatures complying with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.* Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided,*

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however, that, with respect to any proposed change in the corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The subject line must begin: *In re Lithia Motors, Inc.*

VI.

IT IS FURTHER ORDERED that Respondent, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports.

VII.

This order will terminate on December 8, 2036, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

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Provided, further, that if such complaint is dismissed or a federal court rules that Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Lithia Motors, Inc. The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the FTC will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

The respondent is a car dealership that sells used motor vehicles. According to the FTC complaint, respondent has represented that the used motor vehicles it sells have been subject to rigorous inspection, including for safety issues, but has failed to disclose that the used motor vehicles it sells are subject to open recalls for safety issues.

For instance, the respondent has posted advertisements on its website that make the following representations about vehicles that carry a dealer-backed “60 Day/3000 Mile” warranty: “160-Point Quality Inspection--Lithia 60 Day/3,000 Mile vehicles are

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put through an exhaustive 160-checkpoint Quality Assurance Inspection. We want the vehicles to look, feel and smell as new as possible. We inspect everything from the tires and the brakes to the suspension, drive train, engine components and even the undercarriage. Only vehicles that pass all 160 checkpoints (as appropriate to vehicle content) can receive our 60 Day/3,000 miles Limited Warranty. See dealer for details.”

Even though it makes such claims, the respondent has allegedly advertised on its websites numerous Lithia 60-Day/3,000 Mile used vehicles that were subject to open recalls for safety issues. In numerous instances, when the respondent allegedly advertised Lithia 60-Day/3,000 Mile used vehicles that are subject to open recalls for safety issues, it provided no accompanying clear and conspicuous disclosure of this fact. The proposed complaint alleges that this failure to disclose constitutes a deceptive act or practice under Section 5 of the FTC Act.

The proposed order is designed to prevent the respondent from engaging in similar deceptive practices in the future. Part I prohibits the respondent from representing that used motor vehicles it offers for sale are safe, have been repaired for safety issues, or have been subject to an inspection for issues related to safety unless the used motor vehicles are not subject to any open recalls for safety issues or the respondent discloses, clearly and conspicuously, in close proximity to such representation, any material qualifying information related to open recalls for safety issues. Part II is a provision that orders the respondent to notify every consumer who purchased from it a 60-Day/3,000 Mile used motor vehicle between July 1, 2013 and the date of entry of the Order that some of the used vehicles it sold during this time had been recalled for safety issues which weren’t repaired as of the date they were sold, how to determine whether a vehicle is subject to an unrepaired recall, and information on how to get a vehicle fixed if it is subject to an open recall.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires the respondent to maintain for five years, and produce to the Commission upon demand, any relevant ads and associated documentary material. Part IV is an order distribution provision that requires the

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respondent to provide the Order to current and future principals, officers, directors, and managers, and to all current employees, agents, and representatives having responsibilities with respect to the subject matter of the Order. Part V requires the respondent to notify the Commission of corporate changes that may affect compliance obligations. Part VI requires the respondent to submit a compliance report to the Commission 60 days after entry of the order, and also additional compliance reports within 10 business days of a written request by the Commission. Part VII “sunsets” the order after twenty years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order’s terms.

Complaint

IN THE MATTER OF

**JIM KOONS MANAGEMENT COMPANY
D/B/A
JIM KOONS AUTOMOTIVE COMPANIES**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket No. C-4598; File No. 152 3104
Complaint, December 8, 2016 – Decision, December 8, 2016*

This consent order addresses Jim Koons Management Company's failure to disclose open recalls for safety issues. The complaint alleges that respondent has represented that the used motor vehicles it sells have been subject to rigorous inspection, including for safety issues, but has failed to disclose that the used motor vehicles it sells are subject to open recalls for safety issues. The consent order prohibits the respondent from representing that used motor vehicles it offers for sale are safe, have been repaired for safety issues, or have been subject to an inspection for issues related to safety unless the used motor vehicles are not subject to any open recalls for safety issues or the respondent discloses, clearly and conspicuously, in close proximity to such representation, any material qualifying information related to open recalls for safety issues.

Participants

For the *Commission: Courtney Estep, Peter Lamberton, Michael White, and Evan Zullow.*

For the *Respondent: Mike Goodman, Lucy Morris, and Joel Winston, Hudson Cook LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Jim Koons Management Company, also d/b/a Jim Koons Automotive Companies ("Respondent"), has violated provisions of the Federal Trade Commission Act ("FTC Act"), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a Maryland corporation, with its principal office or place of business at 2000 Chain Bridge Road, Vienna,