

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,

Complaint

Virginia 22182. Respondent has marketed, advertised, offered for sale, and sold used motor vehicles.

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 December 2014, 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.koons.com, excerpts of which are attached as Exhibits A through D. On its website, until at least June 2015, on a page prominently titled, “Koons Used Car Advantage,” and other pages similarly touting the “Koons Used Car Advantage,” it has made claims regarding the advantages of buying from Koons. These marketing materials have included the following representations regarding certified used vehicles:

“Backed by the Koons Used Car Advantage, each vehicle we carry has been carefully selected and tested”

Exhibit A at 1-2.

“The Koons Used Car Advantage Guarantees:

Koons Quality Inspection

Every certified Koons Outlet vehicle must pass a rigorous and extensive quality inspection before it can be sold. Our certified mechanics check all major mechanical and electrical systems and every power accessory as part of our rigid quality controls.”

Exhibit B.

Complaint

5. Even though it has made the claims set forth in Paragraph 4, Respondent has advertised numerous certified used vehicles subject to 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 a used certified vehicle that has an open recall for safety issues for a key ignition switch defect, which can affect engine power, power steering, braking, and airbag deployment, thereby increasing the risk of a crash and occupant injury. Respondent has also advertised a certified used vehicle that has an open recall for safety issues for defects associated with the alternator, which can result in the vehicle unexpectedly shutting down or in an electrical fire. Respondent has also advertised a certified used vehicle that has a rear suspension defect that could result in a fuel leak or fire.

7. In numerous instances, until at least June 2015, when Respondent has advertised certified used 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:

Certified Pre-Owned **2012**

KOONS USED CAR

ADVANTAGE

Quality Used Cars at Low Outlet Prices!

We're Gonna Win! Ya!

FIND OUT MORE

Vehicle Keyword Search **Search** **391 Items Matching:** All Listings

Select View:

Sort by: Year Make Model Bodystyle Color Mileage WOW Price Drivetrain Page 1 of 6

Search

- All Locations
- All Years
- All Makes
- All Models
- All Mileage
- All Trims
- All Body Styles
- All Prices
- All Highway MPGs

Reset Search

Location

- Koons Arlington Toyota - Used Car Lot #20
- Koons Easton Toyota (9)
- Koons Falls Church Ford (9)
- Koons Kia of Baltimore (2)

2009 Toyota Yaris Hatchback

WOW PRICE: \$8,750*

KBB Retail Value: \$9,582
Koons Savings: \$532

CLICK HERE TO WATCH VIDEO

CHAT LIVE

More

Power Package w/Keyless (Convenience Package, Power Door Locks, Power Windows, Colored Power Outside Rearview Mirror, ...)

KSTUFF **MSRP**

Drive Line:	Front-wheel Drive	Interior Color:	Black
Transmission:	Automatic	Interior Code:	Black
Model Code:	1402	Stock #:	2100854
Engine:	1.8 150	Body Style:	Hatchback
Mileage:	75,407 miles	Location:	Toyota - Used Car Lot
MPG Range:	24/35		

2009 Toyota Yaris Hatchback

WOW PRICE: \$9,890*

CLICK HERE TO WATCH VIDEO

CHAT LIVE

More

Power Package w/Keyless (Convenience Package, Power Door Locks, Power Windows, Colored Power Outside Rearview Mirror, ...)

KSTUFF **MSRP**

Drive Line:	Front-wheel Drive	Interior Color:	Metallic
Transmission:	Automatic	Interior Code:	Dark Gray
Model Code:	1402	Stock #:	0120054
Engine:	1.8 150	Body Style:	Hatchback
Mileage:	71,147 miles	Location:	Toyota - Used Car Lot
MPG Range:	24/35		

Complaint

Exhibit C.

9. When consumers have viewed specific vehicle listings on Respondent's website, there is no disclosure regarding open recalls for safety issues. An example of such a listing includes the following:

2009 Toyota Yaris Hatchback

WOW PRICE: \$8,750*
KBB Retail Value: \$9,582
Koons Savings: \$832

7 DAY EXCHANGE

CLICK HERE TO CONFIRM AVAILABILITY

CERTIFIED USED VEHICLE

Comments:

5D Hatchback, 1.5L I4 DOHC VVT-i 18V, ONE OWNER and 4-Speed Automatic, Toyota FEVER! Your satisfaction is our business! Call to schedule a test drive today... 703 522-2421. Buy with confidence... Koons Toyota of Arlington offers a 7 day exchange policy on every pre-owned vehicle, A vehicle history report, Odometer and Title check, Thorough mechanical and condition check. We do the research to ensure you are receiving a great vehicle at a great value \$\$\$ Koons is Proud to be a part of Washington Metropolitan Area since 1980's. How economical is this! Just in, this stunning 2009 Toyota Yaris comes with a 1.5L I4 DOHC VVT-i 18V engine and FWD. Your garage will only be the second one this one-owner Yaris has parked in, and you can definitely see the pride of ownership it experienced in that first garage. When You're Talkin' Cars You're Talkin' Koons!

Overview	Options & Packages	Tech Specs
Engine:	I-4 cyl	Stock #:
Fuel Type:	regular unleaded	Transmission:
Make:	Toyota	MPG Range:
Drive Line:	Front-wheel Drive	Engine Class:
Exterior Color:	Silver	Bodystyle:
Interior Color:	Dark Charcoal	Mileage:
Model Code:	1482	VIN:

Similar

- 2008 Toyota RAV4 SUV
- 2010 Toyota FJ Cruiser Base SUV

Exhibit D.

Complaint

10. To uncover any information about open recalls for safety issues through Respondent's website, until at least June 2015, a consumer would have to locate the "Carfax" link on the search results page or the vehicle listing page and click on it to access a vehicle history report. Moreover, in numerous instances, even these reports omit information about open recalls for safety issues.

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

11. 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.

12. In numerous instances in connection with the representation set forth in Paragraph 11, Respondent has failed to disclose, or disclose adequately, that used vehicles it sells are subject to open recalls for safety issues.

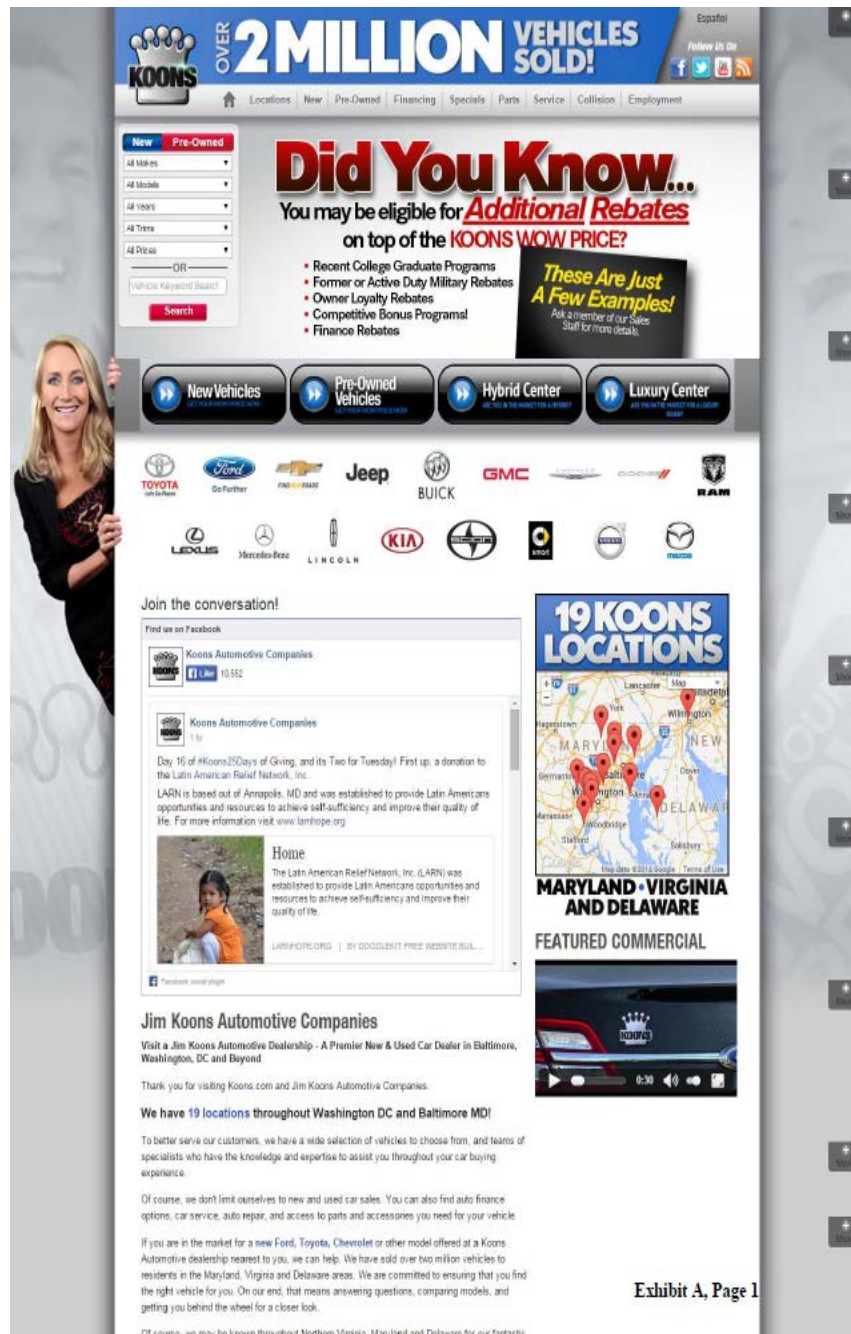
13. Respondent's failure to disclose, or disclose adequately, the material information set forth in Paragraph 12 above, in light of the representation described in Paragraph 11, above, constitutes a deceptive act or practice in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

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

By the Commission.

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Exhibit A



The image shows a screenshot of the Jim Koons Automotive Companies website. A woman with blonde hair, wearing a black top, is standing to the left of the website, holding a tablet that displays the site. The website features a blue header with the Koons logo and the text "OVER 2 MILLION VEHICLES SOLD!". Below the header is a navigation bar with links: Home, Locations, New, Pre-Owned, Financing, Specials, Parts, Service, Collision, and Employment. The main content area includes a search bar on the left, a central banner titled "Did You Know..." with the text "You may be eligible for Additional Rebates on top of the KOONS WOW PRICE?". The banner lists several rebate programs: Recent College Graduate Programs, Former or Active Duty Military Rebates, Owner Loyalty Rebates, Competitive Bonus Programs, and Finance Rebates. To the right of the list is a box that says "These Are Just A Few Examples! Ask a member of our Sales Staff for more details." Below the banner are four buttons: New Vehicles, Pre-Owned Vehicles, Hybrid Center, and Luxury Center. The website also displays logos for various car brands: Toyota, Ford, Chevrolet, Jeep, Buick, GMC, Cadillac, Ram, Lexus, Mercedes-Benz, Lincoln, Kia, Acura, Honda, and Mazda. On the left side, there is a section titled "Join the conversation!" with a Facebook link and a post from Koons Automotive Companies. The post mentions a donation to the Latin American Relief Network (LARN) and includes a photo of a child. On the right side, there is a map titled "19 KOONS LOCATIONS" showing locations in Maryland, Virginia, and Delaware. Below the map is a section titled "MARYLAND • VIRGINIA AND DELAWARE" and a "FEATURED COMMERCIAL" video player.

Did You Know...
You may be eligible for **Additional Rebates**
on top of the **KOONS WOW PRICE?**

- Recent College Graduate Programs
- Former or Active Duty Military Rebates
- Owner Loyalty Rebates
- Competitive Bonus Programs!
- Finance Rebates

These Are Just A Few Examples!
Ask a member of our Sales Staff for more details.

19 KOONS LOCATIONS

MARYLAND • VIRGINIA AND DELAWARE

FEATURED COMMERCIAL

Jim Koons Automotive Companies
Visit a Jim Koons Automotive Dealership - A Premier New & Used Car Dealer in Baltimore, Washington, DC and Beyond

Thank you for visiting Koons.com and Jim Koons Automotive Companies.

We have 19 locations throughout Washington DC and Baltimore MD!

To better serve our customers, we have a wide selection of vehicles to choose from, and teams of specialists who have the knowledge and expertise to assist you throughout your car buying experience.

Of course, we don't limit ourselves to new and used car sales. You can also find auto finance options, car service, auto repair, and access to parts and accessories you need for your vehicle.

If you are in the market for a new Ford, Toyota, Chevrolet or other model offered at a Koons Automotive dealership nearest to you, we can help. We have sold over two million vehicles to residents in the Maryland, Virginia and Delaware areas. We are committed to ensuring that you find the right vehicle for you. On our end, that means answering questions, comparing models, and getting you behind the wheel for a closer look.

Of course, we may be known throughout Northern Virginia, Maryland and Delaware for our fantastic

Complaint

selection of new cars, but we've also garnered quite a reputation for offering high-quality used cars for sale as well. Backed by the Koons Used Car Advantage, each vehicle we carry has been carefully selected and tested to not only meet your undoubtedly high standards for quality, but to exceed them as well.

Car Loans and Lease Solutions Offered by Jim Koons Automotive Companies - Serving the Greater Baltimore and Washington DC Areas

You can always ask a Jim Koons Automotive dealership for assistance with auto financing. The finance team at each of our locations can explain your car loan and lease options in detail after you've gone for a test drive. That way, you can know exactly what it will cost to take home the vehicle you want.

Auto Repairs, Collision Repair and Auto Parts for Maryland, Virginia and Delaware

Koons Automotive Companies has service and repair locations serving the greater Baltimore and Washington DC areas. If you bought a vehicle from a Koons Automotive dealership a day ago, a month, a year, or longer, you're a member of the family. Whether it's a quick tune-up, a recall, or the need for a more immediate fix, you can visit the service center at the dealership nearest to you. Once you've scheduled an appointment online, over the phone, or in person, our automotive enthusiasts will take on nearly any job, big or small.

We could talk all day about everything we have to offer our valued customers, but truth be told, we would love to show you firsthand. We cordially invite you and your family to come visit us any time, at one of our many dealership locations. Whatever your automotive needs may be, we will work incredibly hard to meet them.

The spokesperson for Jim Koons Automotive Companies is Krystal Koons.

[click to hide](#)

WE'RE GONNA WOW YA!

Home	Locations	New	Pre-Owned	Financing	Specials	Parts	Service	COLLISION
		New Vehicles	Used Car Inventory	Finance	New Car Specials	Parts Order Form	Service Appointment	
		New Commercial Vehicles	Certified Pre-Owned	Payment Calculator	Military Discounts	Parts Specials	Service Specials	
		Showroom	Bargain Inventory	Rebates and Incentives	College Rebate Program			
		Car Finder						

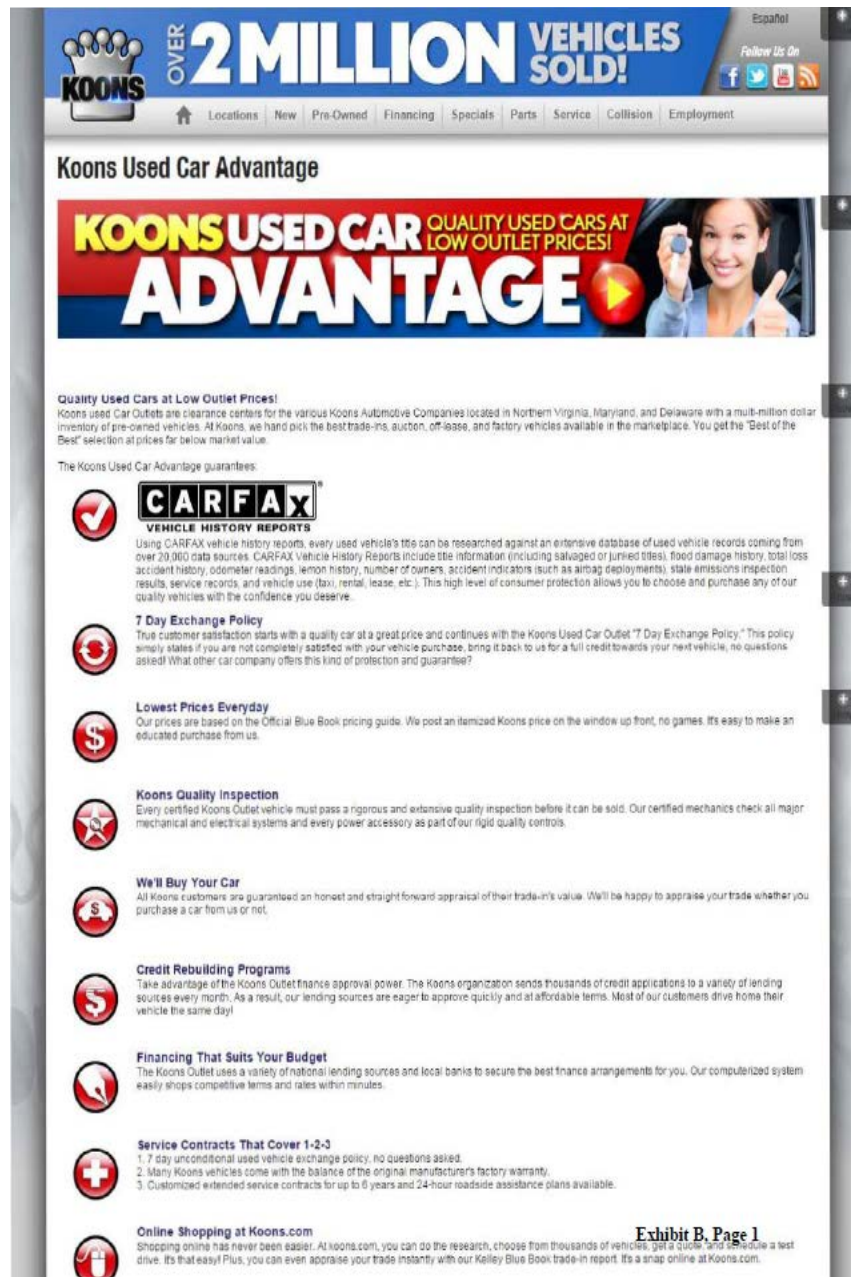
Web Policy | Privacy Policy | Browser Support

www.koons.com/privacy.htm

Authorized by DEALER.COM

Complaint

Exhibit B



Koons Used Car Advantage

KOONS USED CAR ADVANTAGE QUALITY USED CARS AT LOW OUTLET PRICES!

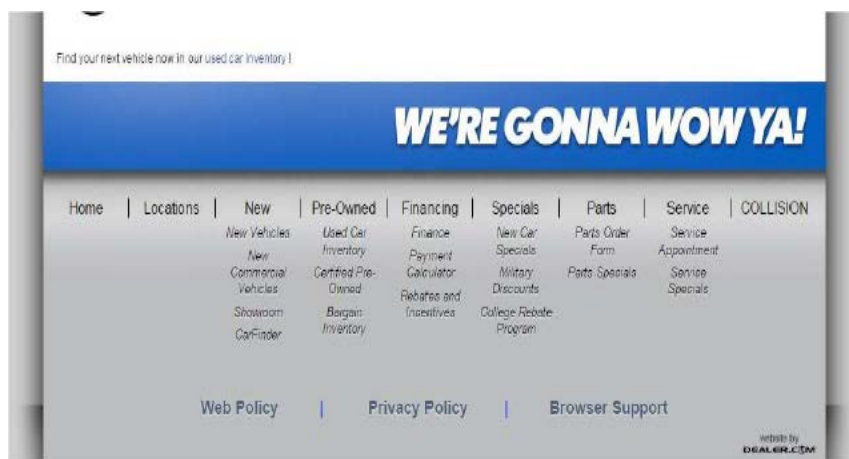
Quality Used Cars at Low Outlet Prices!
Koons Used Car Outlets are clearance centers for the various Koons Automotive Companies located in Northern Virginia, Maryland, and Delaware with a multi-million dollar inventory of pre-owned vehicles. At Koons, we hand pick the best trade-ins, auction, off-lease, and factory vehicles available in the marketplace. You get the "Best of the Best" selection at prices far below market value.

The Koons Used Car Advantage guarantees:

- CARFAX VEHICLE HISTORY REPORTS**
Using CARFAX vehicle history reports, every used vehicle's title can be researched against an extensive database of used vehicle records coming from over 20,000 data sources. CARFAX Vehicle History Reports include title information (including salvaged or junked titles), flood damage history, total loss accident history, odometer readings, lemon history, number of owners, accident indicators (such as airbag deployments), state emissions inspection results, service records, and vehicle use (taxi, rental, lease, etc.). This high level of consumer protection allows you to choose and purchase any of our quality vehicles with the confidence you deserve.
- 7 Day Exchange Policy**
True customer satisfaction starts with a quality car at a great price and continues with the Koons Used Car Outlet "7 Day Exchange Policy." This policy simply states if you are not completely satisfied with your vehicle purchase, bring it back to us for a full credit towards your next vehicle, no questions asked! What other car company offers this kind of protection and guarantee?
- Lowest Prices Everyday**
Our prices are based on the Official Blue Book pricing guide. We post an itemized Koons price on the window up front, no games. It's easy to make an educated purchase from us.
- Koons Quality Inspection**
Every certified Koons Outlet vehicle must pass a rigorous and extensive quality inspection before it can be sold. Our certified mechanics check all major mechanical and electrical systems and every power accessory as part of our rigid quality controls.
- We'll Buy Your Car**
All Koons customers are guaranteed an honest and straight forward appraisal of their trade-in's value. We'll be happy to appraise your trade whether you purchase a car from us or not.
- Credit Rebuilding Programs**
Take advantage of the Koons Outlet finance approval power. The Koons organization sends thousands of credit applications to a variety of lending sources every month. As a result, our lending sources are eager to approve quickly and at affordable terms. Most of our customers drive home their vehicle the same day!
- Financing That Suits Your Budget**
The Koons Outlet uses a variety of national lending sources and local banks to secure the best finance arrangements for you. Our computerized system easily shops competitive terms and rates within minutes.
- Service Contracts That Cover 1-2-3**
1. 7 day unconditional used vehicle exchange policy, no questions asked.
2. Many Koons vehicles come with the balance of the original manufacturer's factory warranty.
3. Customized extended service contracts for up to 6 years and 24-hour roadside assistance plans available.
- Online Shopping at Koons.com**
Shopping online has never been easier. At koons.com, you can do the research, choose from thousands of vehicles, get a quote and schedule a test drive. It's that easy! Plus, you can even appraise your trade instantly with our Kelley Blue Book trade-in report. It's a snap online at Koons.com.

Exhibit B, Page 1

Complaint



Complaint

Exhibit C

1 Cars 0 Saved Cars 0 Price Alerts

Certified Pre-Owned

KOONS USED CAR ADVANTAGE
Quality Used Cars at Low Outlet Prices!

We're Gonna Wow Ya!

[FIND OUT MORE](#)

Vehicle Keyword Search [Search](#) **391 Items Matching:** All Listings Select View

Search

All Locations

All Years

All Makes

All Models

All Mileage

All Trims

All Body Styles

All Prices

All Highway MPG's

[Reset Search](#)

Location

- Koons Arlington Toyota - Used Car Lot (20)
- Koons Easton Toyota (0)
- Koons Falls Church Ford (9)
- Koons Kia of Baltimore (2)
- Koons Kia of Woodbridge (20)
- Koons Silver Spring
- Ford/LINCOLN/Mazda (44)
- Koons Sterling Ford (14)
- Koons Tysons Chevru Buick GMC

Sort by Year Make Model Bodystyle Color Mileage WOW Price Drivetrain Page 1 of 16

2009 Toyota Yaris Hatchback

WOW PRICE: \$8,750*

Drive Line: Front-wheel Drive
 Transmission: Automatic
 Model Code: 1402
 Engine: 14 cyl
 Mileage: 70,407 miles
 MPG Range: 24/35

Exterior Color: Silver
 Interior Color: Dark Charcoal
 Stock #: 0110055A
 Bodystyle: Hatchback
 Location: Koons Arlington Toyota - Used Car Lot

KBB Retail Value: \$9,582
 Koons Savings: \$832

[WATCH VIDEO](#)
[Save This Car](#)
[Get Price Alerts](#)

[CLICK HERE TO CONFIRM AVAILABILITY](#)
[CHAT LIVE](#)

2009 Toyota Yaris Hatchback

WOW PRICE: \$9,890*

Drive Line: Front-wheel Drive
 Transmission: Automatic
 Model Code: 1402
 Engine: 14 cyl
 Mileage: 87,140 miles
 MPG Range: 24/35

Exterior Color: Meteorite
 Interior Color: Dark Charcoal
 Stock #: 0110055A
 Bodystyle: Hatchback
 Location: Koons Arlington Toyota - Used Car Lot

KBB Retail Value: \$10,582
 Koons Savings: \$692

[WATCH VIDEO](#)
[Save This Car](#)
[Get Price Alerts](#)

[CLICK HERE TO CONFIRM AVAILABILITY](#)
[CHAT LIVE](#)

2009 Scion tC Coupe

WOW PRICE: \$9,904*

Drive Line: Front-wheel Drive
 Transmission: Automatic
 Exterior Color: Black
 Interior Color: Black

KBB Retail Value: \$12,620

Exhibit D

Koons

Cars

Saved Cars

Price Alerts

OVER 2 MILLION VEHICLES SOLD!

Follow us on

Facebook Twitter YouTube

[Home](#)
[Locations](#)
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[Pre-Owned](#)
[Financing](#)
[Specials](#)
[Parts](#)
[Service](#)
[Collision](#)
[Employment](#)

2009 Toyota Yaris Hatchback

[Back to Inventory](#)

Photos

Video

KOONS
 OF ARLINGTON
 3212 LEE HWY
 ARLINGTON, VA 22207
 (703) 522-2421

7 DAY EXCHANGE
NO MONEY DOWN • NO CREDIT CHECK

WOW PRICE: \$8,750*

KBB Retail Value : \$9,582

Koons Savings: -\$832

CLICK HERE TO REQUEST INFO

[Save This Car](#)
[Get Price Alert](#)

CERTIFIED PRE-OWNED

BARBER FINANCIAL

Fuel Efficiency Rating

City MPG	29	Highway MPG	35
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*Actual mileage will vary with options, driving conditions, habits and vehicle condition.

Comments:

2D Hatchback, 1.5L I4 DOHC VVT-i 16V, ONE OWNER and 4-Speed Automatic. Toyota REVER! Your satisfaction is our business! Call to schedule a test drive today... 703 522-2421. Buywith confidence.. Koons Toyota of Arlington offers a 7 day exchange policy on every pre-owned vehicle. A vehicle history report, Odometer and Title check. Thorough mechanical and condition check. We do the research to ensure you are receiving a great vehicle at a great value. \$832 Koons is Proud to be a part of Washington Metropolitan Area since 1980's. Hon. economical is this! Just in, this stunning 2009 Toyota Yaris comes with a 1.5L I4 DOHC VVT-i 16V engine and PWD. Your garage will only be the second one this one-owner Yaris has parked in, and you can definitely see the pride of ownership it experienced in that first garage. When You're Talkin' Cars You're Talkin' Koons!

Overview	Options & Packages	Tech Specs
Engine:	I-4 cyl	Stock #: 0100000A
Fuel Type:	regular unleaded	Transmission: Automatic
Make:	Toyota	MPG Range: 29/35
Drive Line:	Front-wheel Drive	Engine Class: 1.5L
Exterior Color:	Silver	Bodystyle: Hatchback
Interior Color:	Dark Charcoal	Mileage: 70,407 miles
Model Code:	1402	VIN: JTDK7R3S0000270000

Included Packages

- Power Package w/Alloy Wheels
- Convenience Package
- Power Door Locks
- Power Windows
- Colored Power Outside Rearview Mirrors

Location

Koons Arlington Toyota - Used Car Lot
 3212 Lee Hwy
 Arlington, VA 22207
 Sales: (800) 960-7341

Map

Similar

2008 Toyota RAV4 SUV
[View Details](#)

2010 Toyota Camry Hybrid
[View Details](#)

2009 Toyota Matrix S Hatchback
[View Details](#)

Decision and Order

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 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 Jim Koons Management Company, also d/b/a Jim Koons Automotive Companies, a corporation, is a Maryland corporation, with its principal office or place of business at 2000 Chain Bridge Road, Vienna VA 22182.
2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondent, and the proceeding is in the public interest.

Decision and Order

ORDER**DEFINITIONS**

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

- A. Unless otherwise specified, “Respondent” shall mean Jim Koons Management Company, also d/b/a Jim Koons Automotive Companies, a corporation, 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.

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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.
 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

Decision and Order

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:
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.

Decision and Order

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.

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 certified used motor vehicle from Respondent between July 1, 2013 and June 15, 2015, 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

Decision and Order

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 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.

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

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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;
- 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

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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, 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 Jim Koons Management Company*.

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;

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- 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.

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 Jim Koons Management Company. 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

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disclose that the used motor vehicles it sells are subject to open recalls for safety issues.

For instance, the respondent has posted advertisements on the website www.koons.com which prominently featured the “Koons Used Car Advantage” and included the representation that “[b]acked by the Koons Used Car Advantage, each vehicle we carry has been carefully selected and tested... .” The website listed among the “Koons Used Car Advantage Guarantees” the following representation: “Every certified Koons Outlet vehicle must pass a rigorous and extensive quality inspection before it can be sold. Our certified mechanics check all major mechanical and electrical systems and every power accessory as part of our rigid quality controls.”

Even though it makes such claims, the respondent has allegedly advertised on its websites numerous certified used vehicles that were subject to open recalls for safety issues. In numerous instances, when the respondent allegedly advertised certified 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 certified used motor vehicle between July 1, 2013 and June 15, 2015 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. The notice also specifies how consumers can check whether the vehicle is subject to an unrepaired recall at the National Highway

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Traffic Safety Administration's website, <https://vinrcl.safercar.gov/vin/>. This website also provides 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 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

MARS PETCARE US, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4599; File No. 152 3229**Complaint, December 12, 2016 – Decision, December 12, 2016*

This consent order addresses Mars Petcare US, Inc.'s advertising, marketing, and sale of dog food under the Eukanuba brand. The complaint alleges that respondent violated Section 5 of the FTC Act by falsely representing that dogs in a ten-year study that were fed Eukanuba brand dog food and received proper care lived exceptionally long lives – including 30 percent or more longer than their typical lifespan. The complaint also alleges that respondent falsely represented that scientific tests prove that feeding dogs its Eukanuba brand dog food can enable dogs to live exceptionally long lives or to live 30 percent or more longer than their typical lifespan.. The consent order prohibits respondent from making misleading or unsubstantiated claims regarding the health benefits of any pet food and requires that respondent possess and rely upon “competent and reliable scientific evidence” to substantiate any such representation.

Participants

For the *Commission*: David M. Newman.

For the *Respondent*: Richard Mann, Keller & Heckman; John Graubert, Covington & Burling.

COMPLAINT

The Federal Trade Commission, having reason to believe that Mars Petcare US, Inc., (“Respondent”) has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a Delaware corporation with its principal office or place of business at 310 Cool Springs Boulevard, Franklin, Tennessee 37067.
2. Respondent has manufactured, advertised, labeled, promoted, offered for sale, sold and distributed dog food under