

Complaint

IN THE MATTER OF

CARMAX, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4605; File No. 142 3202
Complaint, March 22, 2017 – Decision, March 22, 2017

This consent order addresses CarMax, Inc.’s advertisements on its website for numerous used vehicles that were subject to open recalls for safety issues. The complaint alleges that respondent has represented that used motor vehicles it sells have been subject to rigorous inspection, including for safety issues, but has failed to disclose adequately that some of these vehicles 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 a rigorous inspection 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, Michael White and Evan Zullo.

For the *Respondent*: Milo Cividanes and Stu Ingis, Venable LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that CarMax, 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 a Virginia corporation with its principal office or place of business at 12800 Tuckahoe Creek Parkway, Richmond, VA 23238. Respondent has marketed, advertised, offered for sale, and sold used motor vehicles.

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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. Respondent has disseminated or has caused to be disseminated advertisements promoting the sale of used motor vehicles.

4. Respondent’s advertisements have included, but are not necessarily limited to, advertisements and marketing materials posted on the website www.carmax.com, excerpts of which are attached as Exhibits A through D. Until at least November 2014, on its website, including on pages prominently titled, “Why CARMAX?” and “CarMax Quality Certified,” it has made claims regarding the rigorous inspections CarMax completes on every used vehicle it sells. These marketing materials have included the following representations:

“125+ Point Inspection

Experienced technicians put every vehicle through a rigorous Certified Quality Inspection – over 125 points must check out before it meets our high standards.”

“No cars with flood or frame damage

Not every car that looks good is good. We’re confident in the safety and reliability of our vehicles because our technicians are trained to detect those with hidden damage.”

Every used car is renewed

CarMax cars undergo (on average) 12 hours of renewing—sandwiched between two meticulous inspections—for a car that doesn’t look or feel used.”

Exhibit A at 1.

Complaint

“Every car we sell is carefully inspected and reconditioned to the best condition possible – in fact, we spend over 12 hours, on average, on each used car.”

“We check more than 125 points” The website then lists several categories, including engine, steering system, and brake system.

Exhibit B at 1-3.

02 RENEW
we **renew** each car

Every CarMax used car undergoes a rigorous 125+ point inspection including:

- engine and transmission, plus cooling and fuel systems
- brakes, suspension, steering, and drive axles
- lighting, electrical, heating, and A/C systems
- body and interior, plus all instruments and controls

It takes 12 hours, on average, to recondition a CarMax car to our high standards.

CarMax inspections are ongoing to ensure your car meets our high standards.

- From before we acquire it to before you drive it home, a CarMax car is scrutinized like no other.

We invest time and money renewing every car so you don't have to.

Exhibit C.

“Our top 10 most frequently asked questions...

1. Are all of your used cars inspected?

Yes. All of our used cars are CarMax Quality Certified, which means every vehicle on our lot must pass a 125+ point Certified Quality Inspection by one of our technicians. This comprehensive and detailed inspection includes an investigation to ensure that the car does not have flood or frame damage.”

Exhibit D.

Complaint

5. Respondent's advertisements also have included a television commercial, which is attached as Exhibits E (video), F (transcript), and G (screenshot). The visual component of this commercial has depicted a vehicle undergoing an inspection and "reconditioning" by a team of CarMax employees – as many as six employees simultaneously. The commercial has further depicted the employees inspecting and fixing a wide variety of components of the vehicle, including underneath the front hood, underneath the body of the car, and within the interior of the car. As these images are displayed, an audio voiceover has made the following representations: "To the car that just survived hours of reconditioning, sorry, we know that was a bit invasive. But if we didn't hoist you up in the air and poke around a little, we wouldn't be CarMax. We expect a lot from our cars and we need to make sure that you'll make the grade. ... Oh, just relax. It's going to be a long time before anybody peeks at your undercarriage again." For only approximately three seconds of the thirty second commercial, in tiny, blurry white font at the bottom of the screen, the commercial displays text stating that "Some CarMax vehicles are subject to open safety recalls. See carmax.com for details." **Exhibits E, F, and G.**

6. Even though it has made the claims set forth in Paragraphs 4 and 5, Respondent has regularly advertised vehicles subject to open recalls for safety issues on its website.

7. In some instances, these open recalls for safety issues have included recalls for defects that can cause serious injury. For example, at least until November 2014, Respondent advertised used vehicles with open recalls 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, at least until November 2014, also advertised used vehicles with open recalls for safety issues for defects with airbags, thereby increasing the risk of air bags rupturing and striking occupants with metal fragments upon deployment.

8. In numerous instances, when Respondent has advertised used vehicles subject to open recalls for safety issues, making the claims set forth in Paragraphs 4 and 5, it provided no accompanying clear and conspicuous disclosure of this fact.

Complaint

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

9. 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.

10. In numerous instances in connection with the representation set forth in Paragraph 9, Respondent has failed to disclose, or disclose adequately, that used vehicles it sells are subject to open recalls for safety issues.

11. Respondent's failure to disclose, or disclose adequately, the material information set forth in Paragraph 10 above, in light of the representation described in Paragraph 9, 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 twenty-second day of March, 2017, has issued this complaint against respondent.

By the Commission.

Complaint

Exhibit A

7/17/2014

www.carmax.com/enus/why-carmax/why-carmax-reasons.html

Why CarMax?

Quality, value, service, and a company you can trust

15 great reasons to start at CarMax

Low, no-haggle prices

Get a fair price up front without spending hours negotiating for it.

Flexible financing options

We work with a variety of financial institutions to provide the best possible financing. If approved, you see your offers when we do—just choose the one that's right for you. If you find a better option, you have three business days to refinance, penalty- and interest-free.

**Thousands of cars priced under \$12,000**

With over 35,000 cars in stock across the country, you're sure to find a car that fits your needs and budget. Most can be transferred to a store near you, often for free!

Our Sales Consultants are paid the same

Fixed commissions (except in CA) put their best interests in line with yours, so they can focus on helping to find the car that best fits your needs.

125+ point inspection

Experienced technicians put every vehicle through a rigorous Certified Quality Inspection—over 125 points must check out before it meets our high standards.

No cars with flood or frame damage

Not every car that looks good is good. We're confident in the safety and reliability of our vehicles because our technicians are trained to detect those with hidden damage.

Every used car is renewed

CarMax cars undergo (on average) 12 hours of renewing—sandwiched between two meticulous inspections—for a car that doesn't look or feel used.

Free Full Vehicle History Report

Every used car we sell comes with one, available online or from your Sales Consultant.

Clean Title Guarantee

We guarantee every car to have accurate mileage and not ever to have been designated salvaged or flood-damaged—or we'll buy it back.

5-Day Money-Back Guarantee

If you change your mind for any reason, you can return a car hassle-free within 5 days.

(See your Sales Consultant for written details.)

Limited 30-Day Warranty (60-Day in CT, 90-Day in MA and NY)

Repairs made under warranty cost you nothing—parts and labor are included.

(See your Sales Consultant for written details.)

MaxCare® extended service plans

<http://www.carmax.com/enus/why-carmax/why-carmax-reasons.html>

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www.carmax.com/enus/why-carmax/why-carmax-reasons.html

Enjoy added security with purchase of an available MaxCare Extended Service Plan —you can choose one that meets your driving needs, and include the cost in your financing!

Nearly every make and model all in one place

Don't drive all over town to find the vehicle you need. Almost all of our stores carry over 30 top brands—from Acura to Volvo.

We'll buy your car even if you don't buy ours®

We'll buy any car we appraise, regardless of make, mileage, or condition. And your offer will be the same, whether you buy from us or not. Bring in your car today!

[Learn more about appraisals](#)

Experience that's measured in millions

That's millions, as in over 4,000,000 cars sold and over 16,000,000 appraised. There's simply no substitute for what we've learned about cars and what you want when it comes to buying and selling cars. That's why we're America's #1 used car retailer.

[Learn more about CarMax](#)

Find a Car	Customer Relations	Company Information	Your Nearest Store: King of Prussia	
Sell Us Your Car	Owners	About CarMax	Visit Us	Call Us
	Contact Us	Why CarMax	185 S Gulph Rd	General
Financing	FAQ	Careers at CarMax Now Hiring!	King of Prussia, PA	Local (610) 337-0716
Financing at CarMax			19406	Toll Free (855) 243-9949
CarMax Auto Finance	Follow CarMax	CarMax Foundation	Showroom Hours	Fax (610) 290-8192
Make a Payment	Join us on Facebook	Investor Relations	Mon-Fri 10-9	Sales
Research		Pressroom	Sat 9-9	Local (610) 290-8190
Find a Store	About CarMax Mobile	Sitemap	Service Dept. Hours	Toll Free (855) 243-7058
			Mon-Fri 7:30-6	Fax (610) 290-8194
				Telephone Hours
				Mon-Sat 9-9

Copyright © 2014 CarMax Business Services, LLC [Mobile Site](#) [Privacy Policy](#) [Terms of Use](#) [CA Supply Chain Transparency](#)

[Website Feedback](#)

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Exhibit B

7/17/2014

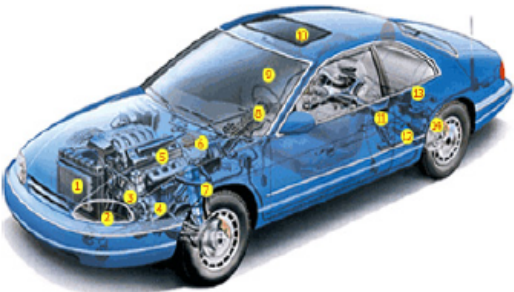
CarMax

[Website Feedback](#)

CarMax Quality Certified

CarMax quality is knowing that you can depend on your car, day after day, year after year. Every car we sell is carefully inspected and reconditioned to the best condition possible—in fact, we spend over 12 hours, on average, on each used car. To give our customers even more confidence in our cars, we offer a 5-Day Money-Back Guarantee and a Limited 30-Day Warranty (60-Day in CT, 90-Day in MA and NY).* We believe in our cars, and we think you will, too.

*See store for written details



We check more than 125 points, including:

- | | |
|---------------------------|---------------------------|
| 1. Cooling System | 8. Steering System |
| Radiator | Tie Rods |
| Coolant | Idler Arms |
| Radiator/Heater Hoses | Center Links |
| Recovery System | Pump |
| Cooling Fan | Hoses |
| Belts | Lines |
| Top | Shaft |
| 2. Lighting System | Couplings |
| Brake Lights | Alignment |
| Turn Signal Lights | Top |
| Dash Lights | 9. Body/Interior |
| Instrument Lights | Carpet |
| Back-Up Lights | Upholstery |

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CarMax

Hazard Lights	Trim
Side Marker Lights	Hood Latches
Hood Lights	Trunk Release
Trunk Lights	Fuel Door Release
Courtesy Lights	Paint

Reading Lights	Top
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Glove Box Lights	10. Accessories
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Tag Lights	Clock
Top	Sunroof

3. Heating & A/C System	Power Antenna
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Compressor	Rear Defroster
Clutch	Rear Defogger
Condenser	Radio
Evaporator	Tape/CD Player
Hoses	Power Seats
Lines	Warning Chimes
Refrigerant Level	Cigarette Lighter
Cooling Fan	Cruise Control

Top	Trip Computer
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4. Electrical System	Electronic Instrument Cluster
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Alternator/Regulator	Tachometer
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Starter	Top
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Battery	11. Miscellaneous
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Gauges	Odometer
Horn	Tilt, Lock & Telescopic Steering Wheel
Windshield Wiper	Spare Tire
Windshield Washer	Jack

Top	Door Locks
---------------------	------------

5. Engine	Trunk Locks
Engine Performance	Remote Control
Emission Controls	Locks

Emission Filters	Top
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Vacuum Hoses	12. Drive Axles
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Oil Pressure	Constant Velocity Joints
Motor Mounts	

<http://www.carmax.com/venus/eq/default.html>

Exhibit B, Page 2

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7/17/2014

CarMax

Exhaust	Constant Velocity Boots
Spark Plugs	Universal Joints
Secondary Ignition System	Gears
Catalytic Converter	Bearings
	Vibration/Backlash

[Top](#)[Top](#)**6. Transmission****13. Fuel System**

Fluid	Fuel Tank
Shift Points	Fuel Lines
Slipping	Hoses
Transmission Mounts	Fuel Pump
Noise	
Clutch Operation	

[Top](#)

4WD Operation

14. Brake System

Leakage	Anti-Lock System
Hoses	Fluid Level
Lines	Master Cylinder
Modulator	Booster
Linkages	Front Right Shoes/Pads

[Top](#)

Front Left Shoes/Pads

7. Suspension System

Rear Right Shoes/Pads

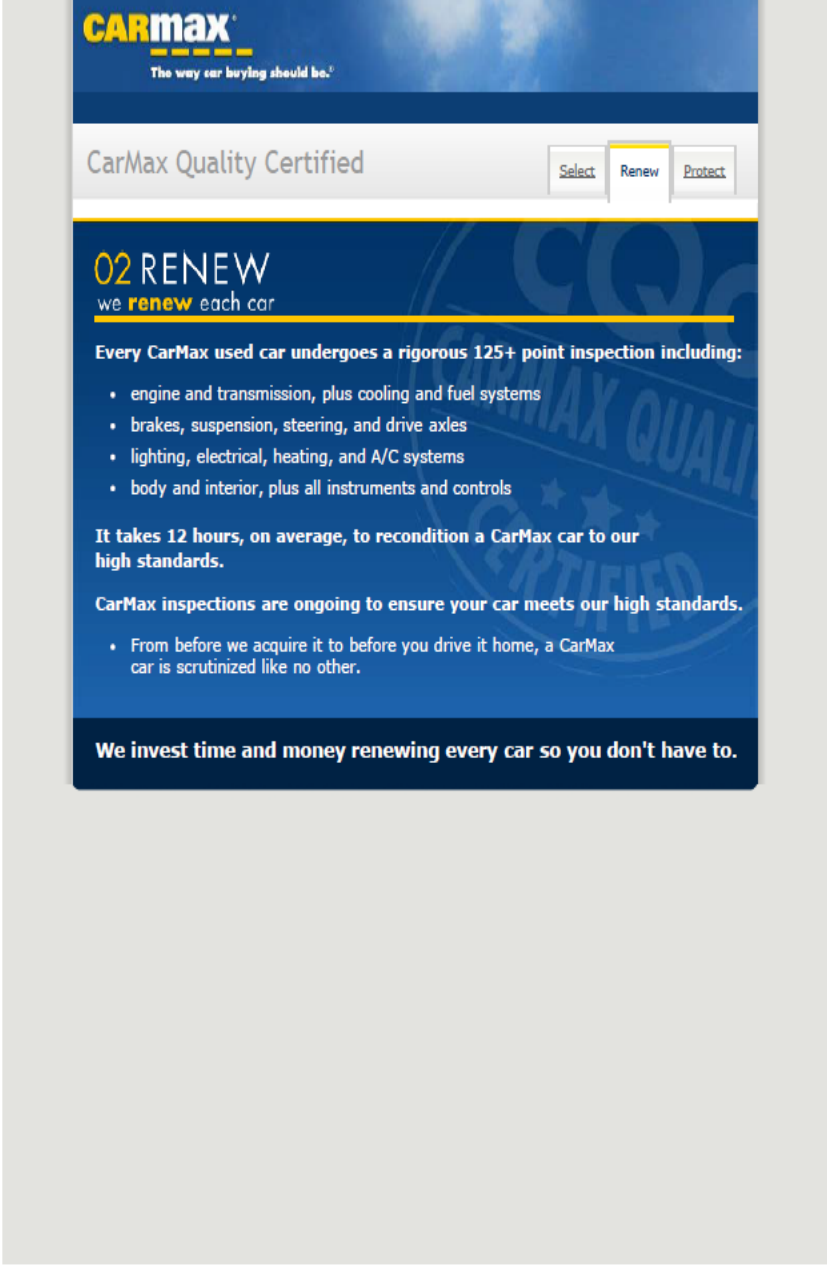
Frame Integrity	Rear Left Shoes/Pads
Ball Joints	Parking Brake
Tires	Hoses
Wheels	Lines
Springs	Calipers
Torsion Bars	Wheel Cylinders
Sway Bar	Springs
Links	Linkages
MacPherson Struts	

[Top](#)[Top](#)[Privacy policy](#) | [Terms of Use](#)[Website Feedback](#)

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Exhibit C

CarMax



The screenshot displays the CarMax website's 'CarMax Quality Certified' section. At the top, the CarMax logo is visible with the tagline 'The way car buying should be.' Below this, a navigation bar includes 'CarMax Quality Certified' and three tabs: 'Select', 'Renew' (which is highlighted), and 'Protect'. The main content area has a dark blue background with a large '02 RENEW' heading, where '02' is in yellow and 'RENEW' is in white. Below the heading, it says 'we **renew** each car'. A list of inspection points follows, stating that every CarMax used car undergoes a rigorous 125+ point inspection including engine and transmission, brakes, suspension, steering, drive axles, lighting, electrical, heating, and A/C systems, and body and interior. It also mentions that it takes 12 hours, on average, to recondition a CarMax car to their high standards. A final statement reads, 'We invest time and money renewing every car so you don't have to.'

CARmax
The way car buying should be.®

CarMax Quality Certified

Select Renew Protect

02 RENEW
we **renew** each car

Every CarMax used car undergoes a rigorous 125+ point inspection including:

- engine and transmission, plus cooling and fuel systems
- brakes, suspension, steering, and drive axles
- lighting, electrical, heating, and A/C systems
- body and interior, plus all instruments and controls

It takes 12 hours, on average, to recondition a CarMax car to our high standards.

CarMax inspections are ongoing to ensure your car meets our high standards.

- From before we acquire it to before you drive it home, a CarMax car is scrutinized like no other.

We invest time and money renewing every car so you don't have to.

http://www.carmax.com/enus/popup/carmax_quality.html?k=02[7/17/2014 12:15:57 PM]

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Exhibit D

CarMax FAQ

CARmax
The way car buying should be.

Find a Car | Sell Us Your Car | Research | Financing | Why CarMax | Find a Store

Search | MYCARMAX | Sign In | Register

Your Nearest Store
King of Prussia
Change | Contact Us | Map | Website Feedback

Sell Us Your Car! Schedule an appraisal

Company Information | About CarMax | Careers | Diversity | CarMax Foundation | Investor Relations | Pressroom

Our top 10 most frequently asked questions

- [Are all of your used cars inspected?](#)
- [What are my payment options?](#)
- [How do I contact someone at CarMax?](#)
- [Do you transfer used cars between stores? What about new cars?](#)
- [Can I buy a car online?](#)
- [Can I be notified when a car I'm interested in is added to your inventory?](#)
- [Can I reserve a car online until I can come in to see it?](#)
- [Do your used cars come with warranties?](#)
- [Some of the cars in my results are marked with a "V" in a circle. What does this mean?](#)
- [Do you offer financing?](#)

1. Are all of your used cars inspected?
Yes. All of our used cars are [CarMax Quality Certified](#), which means every vehicle on our lot must pass a 125+ point [Certified Quality Inspection](#) by one of our technicians. This comprehensive and detailed inspection includes an investigation to ensure that the car does not have flood or frame damage. In addition, we back every one of our cars with a [5-Day Money-Back Guarantee*](#) and a [Limited 30-Day Warranty \(60-Day in CT, 90-Day in MA and NY\)*](#).

* See store for written details

[^ Top](#)

2. What are my payment options?
Your payment options will vary depending on the company who finances your car. For information on your payment options, please speak with a representative of your finance company.

If you financed your car through CarMax Auto Finance, you have access to a variety of payment options. In all cases, you receive credit on the date we receive your payment (for late charge and finance charge purposes), although it may take 1-2 business days for your payment to post to your account.

1. Pay online
By registering with [MyCarMax](#), you can manage your CarMax Auto Finance payments with ease. You can make a single payment or set up recurring payments.

[Pay Now through MyCarMax](#)

2. Payments by phone
Call us at 800-925-3612 to make a one-time payment on our automated system. You will be provided a confirmation number with your payment.

[About CarMax](#)
[Our culture and values](#)
[Timeline](#)
[Awards](#)
[Top 10 FAQ](#)

More questions, more answers
Got a question that's not answered here? We have several other FAQs you can check.

[FAQ](#)

<http://www.carmax.com/usa/company-info/about-us-faq.html> [7/17/2014 12:29:43 PM]

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CarMax FAQ

3. By postal mail

Send payments to:

CarMax Auto Finance
P.O. Box 3174
Milwaukee, WI 53201-3174

Payoffs should be mailed to:

CarMax Auto Finance
Attn: Payoff Department
P.O. Box 440609
Kennesaw, GA 30160

We recommend mailing your payment 7-10 days before your due date to ensure that we receive it on time.

4. Western Union/Moneygram®

Western Union

You may go to any Western Union location to have your payment sent to us. Call 1-800-238-5772 to find the nearest location. You will need to reference our city code, "CarMax," along with the state code of "Georgia." Please be sure to reference your account number to ensure proper posting. We typically receive and post these payments to your account within one full business day. Our business days are Monday-Friday. Western Union may charge a fee for this service.

MoneyGram ExpressPayments® Service

You may go to any MoneyGram retail agent location to have your payment sent to us. Call 1-800-MoneyGram to find the nearest location. At the agent location, please provide the clerk with the following: Receive Code "4645," company name "CarMax," city "Kennesaw," state "GA," and your account number to ensure proper posting. We typically receive and post these payments to your account within one full business day. Our business days are Monday-Friday. MoneyGram may charge a fee for this service.

For more information about CAF payment options, call us at 1-800-925-3612.

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3. How do I contact someone at CarMax?

To get an immediate answer to your question, start at your nearest [CarMax Superstore](#).

If the store is unable to resolve your concern, use the [Corporate Contact Form](#), or call us at (800) 519-1511, Mon-Fri, 8:30 am to 8:00 pm EST.

Send written customer comments to:

CarMax
Attn: Customer Relations
12800 Tuckahoe Creek Parkway
Richmond, VA 23238

CarMax Auto Finance

Submit questions about your existing account through the [CarMax Auto Finance Contact Form](#) (note: please do not submit potentially sensitive information, such as your account number or social security number, through the website).

You can also contact CAF by phone at (800) 925-3612, or write to:

CarMax Auto Finance
Attn: Customer Service Department
P.O. Box 440609
Kennesaw, GA 30160

For questions about financing a vehicle, please contact your nearest CarMax store.

Complaint

CarMax FAQ

Website questions

Submit all questions or concerns about carmax.com® through our [Web Feedback Form](#). Please note, we can only answer technical questions related to the CarMax website through the following link. For information on specific vehicles or CarMax policies, please contact your local CarMax store.

⬆ [Top](#)

4. Do you transfer used cars between stores? What about new cars?

Yes. We can transfer most used cars to the store nearest you from another store. In some cases, a transfer fee will apply. We are unable to transfer new vehicles, Toyota Certified Used Vehicles in Laurel, Maryland or Kenosha, Wisconsin, and any used vehicle identified as nontransferable. Learn more about [transferring vehicles](#).

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5. Can I buy a car online?

Although you cannot complete a car-buying transaction online, you can begin the process. Each car page includes several links to help you get started, including "Request more information," "Schedule a test drive," and "Request financing information." Clicking these links allows you to submit a request to one of the dedicated Internet Sales Consultants at your nearest store. Of course, you are also welcome to call your nearest store; the phone number and address will be listed at the bottom of every page in our website.

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6. Can I be notified when a car I'm interested in is added to your inventory?

Yes. All you have to do is click the "Create alert" link at the top of the search results page. You'll then have the chance to specify exactly what type of car you're searching for and give us your email address so we can notify you when one becomes available.

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7. Can I reserve a car online until I can come in to see it?

Yes. You can hold most of our cars for a specific appointment time, online or by phone. Choose the "Hold This Car" option on the car's page, then choose the date and time you'd like to come in. Once your car is reserved, it will be no longer be available for sale to anyone but you until after your appointment.

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8. Do your used cars come with warranties?

All of our used cars are [CarMax Quality Certified](#), which means every CarMax used car comes with a [Limited 30-Day Warranty \(60-Day in CT, 90-Day in MA and NY\)*](#). Please see your local CarMax store for written details. We also offer an optional MaxCare® extended service plan for all our used vehicles. Learn more about [MaxCare extended service plans](#).

* See store for written details

⬆ [Top](#)

9. Some of the cars in my results are marked with a "V" in a circle. What does this mean?

The "V" stands for ValuMax.® ValuMax vehicles are thoroughly inspected and reconditioned older vehicles, 6+ years old and/or 60,000+ miles. They all offer the CarMax [5-Day Money-Back Guarantee*](#) and [Limited 30-Day Warranty \(60-Day in CT, 90-Day in MA and NY\)](#),* and are chosen for their exceptional value.

* See store for written details

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Complaint

CarMax FAQ

10. Do you offer financing?

Yes. We offer fast, fair financing through several finance companies, including CarMax Auto Finance, a division of CarMax. Most of our customers' financing is approved in 20 minutes or less. And if you can find better financing elsewhere, you have three days to change it, penalty free.

CarMax also works with the finance companies of all new car brands we sell. You can find out if a manufacturer's finance company offers a special financing plan on a particular new vehicle on our [new car page](#).

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Find a Car**Sell Us Your Car****Financing**

[Financing at CarMax](#)

[CarMax Auto Finance](#)

[Make a Payment](#)

Research**Find a Store****Customer Relations**

[Owners](#)

[Contact Us](#)

[FAQ](#)

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Company Information

[About CarMax](#)

[Why CarMax](#)

[Careers at CarMax](#) **Now Hiring!**

[CarMax Foundation](#)

[Investor Relations](#)

[Pressroom](#)

[Sitemap](#)

Your Nearest Store: King of Prussia

[Change](#) | [Map It](#) | [Store Locator](#) | [Schedule A Store Visit](#)

Visit Us

185 S Gulph Rd
King of Prussia, PA
19406

Showroom Hours

Mon-Fri 10-9
Sat 9-9

Service Dept. Hours

Mon-Fri 7:30-6

Call Us**General**

Local (610) 337-0716
Toll Free (855) 243-9949
Fax (610) 290-8192

Sales

Local (610) 290-8190
Toll Free (855) 243-7058
Fax (610) 290-8194

Telephone Hours

Mon-Sat 9-9

Complaint

Exhibit E

[Video File]

Complaint

Exhibit F

1

1 OFFICIAL TRANSCRIPT PROCEEDING

2 FEDERAL TRADE COMMISSION

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8 MATTER NO. 1423202

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10

11 TITLE CARMAX, INC.

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14 DATE RECORDED: DECEMBER 22, 2015

15 TRANSCRIBED: JANUARY 6, 2016

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18 PAGES 1 THROUGH 5

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24 CARMAX TV ADVERTISEMENT

25 PEVM CARMAX AD 2015-12-22

Complaint

2

1 FEDERAL TRADE COMMISSION

2 I N D E X

3

4 RECORDING:

PAGE:

5 CarMax TV Advertisement

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Complaint

3

1 FEDERAL TRADE COMMISSION
2
3 In the Matter of:)
4 CarMax, Inc.) Matter No. 1423202
5)
6 -----)
7 December 22, 2015

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11 The following transcript was produced from a
12 digital recording provided to For The Record, Inc. on
13 January 5, 2016.

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Complaint

4

1 PROCEEDINGS

2 - - - - -

3 CARMAX TV ADVERTISEMENT

4 ANNOUNCER: To the car that just survived hours
5 of reconditioning, sorry, we know that was a bit
6 invasive. But if we didn't hoist you up in the air and
7 poke around a little, we wouldn't be CarMax. We expect a
8 lot from our cars and we need to make sure that you'll
9 make the grade. You have to admit you're looking awfully
10 nice. Oh, just relax. It's going to be a long time
11 before anybody peaks at your undercarriage again.

12 (End of advertisement.)

13 (The recording was concluded.)

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Complaint

5

1 C E R T I F I C A T I O N O F T Y P I S T

2

3 MATTER NUMBER: 1423202

4 CASE TITLE: CARMAX, INC.

5 TAPING DATE: DECEMBER 22, 2015

6 TRANSCRIPTION DATE: JANUARY 6, 2016

7

8 I HEREBY CERTIFY that the transcript contained
9 herein is a full and accurate transcript of the tapes
10 transcribed by me on the above cause before the FEDERAL
11 TRADE COMMISSION to the best of my knowledge and belief.

12

13 DATED: JANUARY 6, 2016

14

15

16 ELIZABETH M. FARRELL

17

18 C E R T I F I C A T I O N O F P R O O F R E A D E R

19

20 I HEREBY CERTIFY that I proofread the transcript for
21 accuracy in spelling, hyphenation, punctuation and
22 format.

23

24

25 SARA J. VANCE

Decision and Order

Exhibit G

Video Image Screenshot With Text Disclaimer:

**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) statements by Respondent that it neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, it admits the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

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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 any comments received from interested persons pursuant to Section 2.34 of its Rules, 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 CarMax, Inc. is a Virginia corporation with its principal office or place of business at 12800 Tuckahoe Creek Parkway, Richmond, VA 23238.
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:

- A. Unless otherwise specified, “Respondent” shall mean CarMax, 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” means 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:

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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.
 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.

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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 motor vehicles that Respondent offers for sale are safe, have been repaired for safety issues, or have been subject to a rigorous inspection, unless:
1. The used motor vehicles are not subject to any open recalls relating to safety, 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, including but not limited to:
 - a. the fact that its used motor vehicles may be subject to recalls for safety issues that have not been repaired, and

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- b. how consumers can determine whether an individual used motor vehicle is subject to an open recall for safety issues that has not been repaired,

and the representation is otherwise not misleading; *provided further that* prior to the consummation of the sale of an individual used motor vehicle to a consumer, Respondent must clearly and conspicuously provide to the consumer either (a) any written notification from a manufacturer that Respondent has received that the motor vehicle is subject to an open recall for a safety issue, or a document that conveys the same information using a substantially similar format, or (b) a written notification that clearly and conspicuously conveys that the vehicle is subject to an open recall that is unrepaired, and the safety risks associated with the recall, that is made available by the U.S. Department of Transportation's National Highway Traffic Safety Administration ("NHTSA") or a commercial provider of recall information.

B. Misrepresent the following:

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

II.

IT IS FURTHER ORDERED that Respondent, within sixty (60) days of entry of this Order, must provide, by first class mail to the last known address of every consumer who purchased a used motor vehicle from Respondent between July 1, 2013 and November 20, 2014, a notice on Respondent's letterhead that clearly and conspicuously states the following:

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“We want to alert you that some of the used cars we recently sold had been recalled for safety issues, but weren't repaired yet when we sold them. You can check whether the used car 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 car 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 used motor vehicle that Respondent can demonstrate was not subject to an open recall for a safety issue at the time of purchase and delivery; (B) any used 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; (C) any used motor vehicle that the consumer no longer owns or possesses because the consumer returned it to Respondent within five (5) days of the date of purchase; or (D) any used motor vehicle whose owner, between March 31, 2014, and November 20, 2014, received from Respondent a letter that did not include any advertising, marketing, or other promotional information, informing the owner clearly and conspicuously that the owner purchased a vehicle that may be affected by the GM ignition switch safety recall (NHTSA Campaign Number 14V171000).

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

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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) business records which demonstrate that a vehicle with an open recall for a safety issue has been repaired, generated by the Respondent in the ordinary course of business; 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 of the vehicle or other ways not related to any representations covered by this order, including a website which differs only with respect to individual vehicle details displayed in inventory or search page(s) of the site;
- B. All materials that were relied upon in disseminating the representation;
- C. All evidence in its possession or control that relates to used vehicle advertising and contradicts, qualifies, or calls into question the representation, or the basis relied upon for the representation, including

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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 supervisory responsibilities with respect to the advertising or marketing of used motor vehicles for sale to consumers or to providing recall disclosures to consumers, 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, 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

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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 Carmax, 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 March 22, 2037, 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.

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

Statement of the Commission

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.

**Statement of the Federal Trade Commission
Concerning Auto Recall Advertising Cases¹
December 15, 2016**

Unrepaired auto recalls pose a serious threat to public safety. Car manufacturers and the National Highway Traffic Safety Administration have recalled tens of millions of vehicles in each of the last several years for defects that pose significant safety risks to consumers. In 2015, for example, recalls affected 51 million vehicles nationwide.² And defects that have been the subject of recalls have led to severe injuries and even death for many consumers. Federal law requires that all new cars sold in the United States be free from recalls, but it does not prohibit auto dealers from selling used cars with open recalls. As a result, absent a change in law, neither NHTSA nor any other federal agency has the authority to ban the sale of used cars that have open recalls across the industry.

Section 5 of the Federal Trade Commission Act, however, enables the Commission to stop car sellers from engaging in false

1 In the Matters of General Motors Company, File No. 1523101; Jim Koons Management Company, File No. 1523104; Lithia Motors, Inc., File No. 1523102; CarMax, Inc., File No. 1423202; West-Herr Automotive Group, Inc., File No. 1523105; and Asbury Automotive Group, Inc., File No 1523103.

2 Gordon Trowbridge, National Highway Traffic Safety Administration, *U.S. Department of Transportation launches new public awareness campaign*, Jan. 21, 2016, https://www.nhtsa.gov/About-NHTSA/Press-Releases/nhtsa_launches_safe_cars_save_lives_campaign_01212015.

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or misleading advertising practices that mask the existence of open recalls, and we are committed to doing just that. As part of this effort, the Commission is issuing final orders against General Motors Company, Jim Koons Management Company, and Lithia Motors, Inc. and announcing proposed orders against CarMax, Inc., West-Herr Automotive Group, Inc., and Asbury Automotive Group, Inc. In these enforcement actions, the Commission is challenging what we allege are deceptive advertising claims by these companies that highlight the rigorous inspections they perform on their used cars, but fail to clearly disclose the existence of unrepaired safety recalls.

More specifically, we allege that the companies named in these actions touted the rigorousness of their car inspections by claiming, for example, to engage in a “172-point inspection and reconditioning,” an “exhaustive 160-checkpoint Quality Assurance Inspection,” or a “rigorous and extensive inspection.” Some of these inspected cars were subject to open recalls. We charge that the companies’ representations about their inspections, absent clear and conspicuous information about open recalls, were likely to mislead reasonable consumers into believing that the inspections included repairing open recalls. Therefore, the companies’ failure to disclose this information was deceptive.³

Our orders stop this deceptive conduct and provide important additional protections for consumers. First, the orders prohibit each company from making any safety-related claim about its vehicles unless (1) the vehicles are recall-free, or, alternatively, the company discloses clearly and conspicuously and in close proximity to the representation both that the vehicles may be subject to open recalls and how consumers can determine the recall status of a particular car, and (2) the claims are not otherwise misleading.⁴

3 Under Section 5 of the FTC Act, “it can be deceptive to tell only half the truth, and to omit the rest. This may occur where a seller fails to disclose qualifying information necessary to prevent one of his affirmative statements from creating a misleading impression.” See *In re International Harvester Co.*, 104 F.T.C. 949, 1057 (1984).

4 For instance, a claim could still be misleading, even with the required

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This means that, if any car on the companies' lots is subject to an open recall, every time the companies make these types of inspection claims, they must prominently disclose that their cars may be subject to open recalls and tell consumers how to determine the recall status of specific cars. And they must provide this information wherever the inspection claims are made – in the showroom, on the lot, and in any TV, radio, or website ad that consumers may view before they even visit a car dealer.

Further, the orders require each company to warn consumers who recently purchased one of its used cars that the vehicle may have an open recall. The Commission can seek civil penalties for violations of these orders, and we will not hesitate to do so if we discover a violation.⁵

These enforcement actions will help empower consumers to make more informed and safer purchasing decisions in a market that, absent a change in federal law, continues to include cars subject to open recalls. Dealers that repair all of their cars can continue to make truthful claims that they are recall-free, and can benefit from the competitive advantages of doing so. Dealers that cannot, or do not, repair all of their cars must instead prominently disclose that the cars may have open recalls when they make certain safety-related claims, such as claims about comprehensive inspections. Dealers are therefore incentivized to repair open recalls in the cars they advertise. At the same time, dealers can continue conducting their inspection programs and truthfully advertising them, provided they prominently disclose that cars may be subject to open recalls and do not misrepresent the recall status or safety of their cars.⁶

disclosure, if a dealer represents that it inspected specific cars when it failed to do so, makes false oral statements to consumers that specific cars are free of recalls, or states a car *may* be subject to a recall (or otherwise implies it does not know the recall status) but in fact knows the car is actually subject to an open recall.

⁵ See *U.S. v. New World Auto*, No. 16-cv-2401 (N.D. Tex. Aug. 22, 2016) (requiring auto dealers to pay civil penalties for violations of FTC order).

⁶ Dealer inspection programs often involve checking that vital components of a car, like the brakes and drivetrain, are working properly and thus can provide important consumer benefits.

Analysis to Aid Public Comment

Finally, we note that other laws, including state product safety, tort, and other consumer protection laws, provide important safeguards to consumers affected by defective cars. Of course, the Commission's orders do not affect the protections afforded by those laws. Rather, the Commission's orders provide independent protection for consumers, requiring that they be given information about open recalls before they purchase a used car.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls altogether, and we support efforts seeking to address this serious public safety issue. Although the Commission's enforcement actions against individual companies cannot substitute for legislative solutions, they provide important protections for consumers to help ensure that they can make informed and safer purchasing decisions in the used car marketplace.

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 CarMax, 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, discussed further below, respondent has represented that used motor vehicles it sells have been subject to rigorous inspection, including for safety issues, but has failed to disclose adequately that some of these

Analysis to Aid Public Comment

vehicles are subject to open recalls for safety issues. Federal law currently does not prohibit car dealers from selling used vehicles subject to open safety recalls; Congress and some states are considering legislation that would do so. The Commission, however, can take action under the FTC Act to prohibit companies from making claims that mislead consumers about safety-related and other material issues. Further, the FTC can take such action in addition to (and entirely independent of) any private rights of action consumers themselves can bring under state law. This proposed action thus does not replace or alter any state laws or legislative proposals; rather, it offers additional protections beyond those afforded under other such laws, as they exist now or may be amended.

More specifically, the complaint in this matter alleges that the respondent has posted advertisements on its website that make the following representations:

125+ Point Inspection

Experienced technicians put every vehicle through a rigorous Certified Quality Inspection – over 125 points must check out before it meets our high standards.

No cars with flood or frame damage

Not every car that looks good is good. We're confident in the safety and reliability of our vehicles because our technicians are trained to detect those with hidden damage.

Every used car is renewed

CarMax cars undergo (on average) 12 hours of renewing—sandwiched between two meticulous inspections—for a car that doesn't look or feel used.

Even though it makes such claims, the respondent has allegedly advertised on its website numerous used vehicles that were subject to open recalls for safety issues. In numerous instances, when the respondent allegedly advertised used vehicles that are subject to open recalls for safety issues, it provided no accompanying clear and conspicuous disclosure of this fact. The

Analysis to Aid Public Comment

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 a rigorous inspection 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 consumers who purchased a used motor vehicle from a CarMax dealership between July 1, 2013 and November 20, 2014 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 must specify how consumers can check whether the vehicle is subject to an unrepaired recall at the National Highway 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. 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

**ASBURY AUTOMOTIVE GROUP, INC.
D/B/A
COGGIN AUTOMOTIVE GROUP
AND
CROWN AUTOMOTIVE GROUP**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket No. C-4606; File No. 152 3103
Complaint, March 22, 2017 – Decision, March 22, 2017*

This consent order addresses Asbury Automotive Group, Inc.’s advertisements to sell used motor vehicles. The complaint alleges that respondent has represented that the certified used motor vehicles it sells have been subject to rigorous inspection, including for safety issues, but has failed to disclose adequately that some of these vehicles 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, Michael White, and Evan Zullow.

For the *Respondent*: Lucy Morris and Joel Winston, Hudson Cook, LLP; Alexander Okuliar, Orrick, Herrington & Sutcliffe LLP; Dean Calloway and George Villasana, in-house attorneys.

COMPLAINT

The Federal Trade Commission, having reason to believe that Asbury Automotive Group, Inc., also d/b/a Coggin Automotive Group and Crown Automotive Group, 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: