

## Complaint

## IN THE MATTER OF

**WEST-HERR AUTOMOTIVE GROUP, INC.**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF  
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket No. C-4607; File No. 152 3105*  
*Complaint, March 22, 2017 – Decision, March 22, 2017*

This consent order addresses West-Herr Automotive Group, Inc.'s advertisements to sell used motor vehicles. 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 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.

**COMPLAINT**

The Federal Trade Commission, having reason to believe that West-Herr Automotive Group, 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 New York corporation, with its principal office or place of business at 3552 Southwestern Blvd, Orchard Park, New York 14127. Respondent has marketed, advertised, offered for sale, and sold used motor vehicles.

## Complaint

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

3. Since at least May 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.westherr.com](http://www.westherr.com), excerpts of which are attached as Exhibits A through D. On its website, until at least June 2015, it has made claims regarding the advantages of buying from West-Herr, including the “West-Herr Guarantee.” These marketing materials have included the following representations regarding used vehicles:

“At West Herr, you can choose from over 1,200 pre-owned vehicles, each backed by a West Herr Guarantee. Peace of Mind Vehicles, Value Cars, and Certified Vehicles - all hand selected, and fully reconditioned for your enjoyment....”

**Exhibit A at 3.**

On a page prominently titled “Why Buy From West-Herr?” found at [www.westherr.com/west-herr-used-car-guarantee.htm](http://www.westherr.com/west-herr-used-car-guarantee.htm), it has made the following representations:

“Each vehicle goes through a rigorous multi-point inspection with our factory trained technicians. The service department grades each vehicle, and only the highest quality vehicles make it to our lots. ...

Only about 40% of the vehicles we take in on trade meet our standards. What happens to the other 60%? They get wholesaled (about 250 per week) at our auction, to other dealers in the area.

## Complaint

We prepare a complete history report on every vehicle. This is our ‘storybook’.”

**Exhibit B at 1.**

5. Even though it has made the claims set forth in Paragraph 4, Respondent has advertised numerous used vehicles subject to open recalls for safety issues on its websites.

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 vehicle that has an open recall for safety issues for defects with the airbag, which can potentially rupture and strike occupants with metal fragments upon deployment. Respondent has also advertised a used vehicle that has an open safety recall 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.

7. In numerous instances, until at least June 2015, when Respondent has advertised used vehicles that are subject to open recalls for safety issues making the claims set forth in Paragraph 4 above, it has provided no accompanying clear and conspicuous disclosure of this fact.

8. Until at least June 2015, when consumers have searched for particular categories of vehicles on Respondent’s website, there has been no disclosure regarding open recalls for safety issues. An example of such search results includes the following:

## Complaint

The screenshot displays the West-Herr Automotive Group website interface. At the top, there is a navigation bar with links for 'NEW Inventory', 'USED Inventory', 'SERVICE Your Vehicle', and 'CONTACT Our Automotive Group'. A search bar is located on the right, and a 'LIVE CHAT' button is on the left. Below the navigation bar, a sidebar on the left lists various car models with checkboxes, including Dodge (49), Ford (247), GMC (42), Honda (61), HUMMER (2), Hyundai (35), Infiniti (11), Jaguar (2), Jeep (32), Kia (47), Lexus (12), Lincoln (14), Mazda (11), Mercedes-Benz (55), Mercury (8), MINI (7), Mitsubishi (5), Nissan (66), Pontiac (12), Ram (9), Saturn (8), Scion (3), Subaru (29), Toyota (194), and Volkswagen (13). The main content area features three vehicle listings:

- 2008 Honda Civic LX**: Mileage: 108331, Drive Line: Front-wheel Drive, Engine: 1.8L I-4 cyl, Transmission: Compact 5-Speed Automatic, Exterior Color: Alabaster Silver, Interior Color: Gray, Stock #: FAE50028A. Kelley Blue Book: \$8,667, West Herr Discount: -\$768, Price: \$7,899. Includes a 'CHECK AVAILABILITY' button.
- 2005 Honda Civic EX**: Mileage: 75322, Drive Line: Front-wheel Drive, Engine: 1.7L I-4 cyl, Transmission: 4-Speed Automatic with Overdrive, Stock #: CW14P364. Kelley Blue Book: \$9,641, West Herr Discount: -\$766, Price: \$8,875. Includes a 'CHECK AVAILABILITY' button.
- 2006 Honda Civic EX**: Mileage: 58229, Drive Line: Front-wheel Drive, Engine: 1.8L I-4 cyl, Transmission: Compact 5-Speed Automatic, Exterior Color: Alabaster Silver, Interior Color: Gray, Stock #: SUK141575A. Kelley Blue Book: \$11,564, West Herr Discount: -\$2,606, Price: \$8,958. Includes a 'CHECK AVAILABILITY' button.

Each listing also includes a 'Watch Video' link and a 'Compare' button.

## Exhibit C.

9. Until at least June 2015, when consumers have viewed specific vehicle listings on Respondent's website, there has been no disclosure regarding open recalls for safety issues. An example of such a listing includes the following:

## Complaint

**WEST HERR**  
NEW YORK

**CHEVROLET of WILLIAMSVILLE**  
8040 Transit Road  
(716) 632-5110

**VALUE CARS**

**Detailed Pricing**

|                    |                |
|--------------------|----------------|
| Kelley Blue Book   | \$9,501        |
| West Herr Discount | -\$726         |
| <b>Price</b>       | <b>\$8,775</b> |

[CHECK AVAILABILITY](#)

[CALCULATE PAYMENTS](#)

[Save This Car!](#) [Get Price Alerts](#)

**Contact**  
West Herr Chevrolet  
Williamsville  
Call **716-632-5110**

**31mpg City 38mpg Hwy**  
**1.7L I-4 Cyl**  
4-SPEED AUTOMATIC WITH OVERDRIVE  
Front-Wheel Drive  
**Exterior Color : Magnesium**  
Interior Color : BLACK

**Mileage : 75,324 Miles**  
Stock # : CW14P364  
Condition : Used  
VIN : 1HGEM22975L006130

**Convenience Features**

|                        |                       |                         |
|------------------------|-----------------------|-------------------------|
| 1-touch down           | Speed control         | Remote keyless entry    |
| Driver vanity mirror   | Illuminated entry     | Passenger vanity mirror |
| Tilt steering wheel    | Rear beverage holders | Driver door bin         |
| Air conditioning       | Power windows         | Power moonroof          |
| Front beverage holders | Passenger door bin    |                         |

[READ MORE](#)

[SCHEDULE A TEST DRIVE](#)

[Trade-In Appraisal](#)

**Directions**

**Exhibit D.**

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, although the "Carfax" link provides no descriptive information or in any way conveys that it contains important safety information about recalls. Moreover, in numerous instances, even these reports omit information about open recalls for safety issues.

## Complaint

**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 twenty-second day of March, 2017, has issued this complaint against Respondent.

By the Commission.

## Complaint

## Exhibit A

Search New York State's Largest Inventory Over 6,500 Vehicles:

Make, Model, etc. [SEARCH](#)

[LIVE CHAT](#)

[NEW Inventory](#) [USED Inventory](#) [SERVICE Your Vehicle](#) [CONTACT Our Automotive Group](#) [login](#)

**TWO THOUSAND FOURTEEN  
BEST PLACES TO  
WORK  
10 YEARS IN A ROW**

[APPLY FOR CREDIT](#) [VIEW SPECIALS](#) [SELL YOUR CAR](#)

[FIND NEW & USED VEHICLES](#) [SERVICE MY CURRENT VEHICLE](#)

Search: [All Conditions](#) [All Years](#) [All Makes](#) [All Body Styles](#) [All Mileage](#) [All Prices](#) [SEARCH](#)

Visit A Store

Exhibit A, Page 1

West Herr Specials

Browse by Vehicle Type

Financing Options

**SPECIAL OFFERS**

Vehicles Under \$15K [VIEW ALL](#)

|                                                                |                                                                     |                                                            |                                                                     |                                                                       |
|----------------------------------------------------------------|---------------------------------------------------------------------|------------------------------------------------------------|---------------------------------------------------------------------|-----------------------------------------------------------------------|
| <p><b>LAST CHANCE</b></p> <p>2003 Saturn ION 2<br/>\$3,995</p> | <p><b>WEST HERR</b></p> <p>2006 Chevrolet Cobalt LT<br/>\$5,399</p> | <p><b>WEST HERR</b></p> <p>2007 Ford Focus<br/>\$5,697</p> | <p><b>LAST CHANCE</b></p> <p>2006 Buick Lacrosse CX<br/>\$6,485</p> | <p><b>WEST HERR</b></p> <p>2007 Ford Five Hundred SEL<br/>\$6,596</p> |
|----------------------------------------------------------------|---------------------------------------------------------------------|------------------------------------------------------------|---------------------------------------------------------------------|-----------------------------------------------------------------------|

Exhibit A, Page 2

## Complaint

### Welcome to West Herr New York

West Herr has been serving Western New York (WNY) and the Buffalo area for over 60 years. We are proud to be New York State's largest automotive group. From our humble beginnings on Clark St. in Hamburg, NY in 1950 we have grown to [18 locations](#), 20 franchises, and over 1500 employees! In 2013, we sold over 37,700 vehicles and serviced more than 300,000! We are grateful to our loyal customers, and our dedicated and hardworking employees. [\(read more about us\)](#)

#### New Inventory Spanning a Variety of Makes and Models

When selection matters most, West Herr Auto Group is your best choice for a new car, truck or SUV in the Buffalo, NY area. With thousands of vehicles in stock, spanning 18 conveniently located dealerships in WNY, you can be sure to find the car, truck, SUV or minivan that suits your needs. Browse our [new inventory](#) today for a complete list of vehicles offered, including such makes as [Chevrolet](#), [Ford](#), [GMC](#), [Toyota](#) and [Honda](#).

#### Massive Used Car Selection

At West Herr, you can choose from over 1,200 pre-owned vehicles, each backed by a West Herr Guarantee, Peace of Mind Vehicles, Value Cars, and Certified Vehicles - all hand selected, and fully reconditioned for your enjoyment. If you are not 100% satisfied with your vehicle, you can exchange it within 30 days, no questions asked!

[View Used Inventory](#) | [Our Guarantees](#)

#### Auto Service, Repair and Parts

Keep your vehicle running at its best by visiting any of our [service and repair locations](#) in or around the Buffalo, NY area. Our factory trained technicians have been trusted by many in Western New York for their ability to quickly and accurately address everything from routine service issues to complex repairs and diagnostics. West Herr even offers three [Collision Centers](#) located in Orchard Park, Williamsville and Hamburg, staffed with technicians capable of repairing all makes and models. If you prefer to do your own service and repairs, contact the professionals at our [OEM auto parts center](#) to ensure you have everything you need to get the job done right.

#### Financing Help Available

Being the largest automotive group in the state has its advantages. We have special relationships with over 30 lenders to help you get approved and keep your rates as low as possible. No matter your credit, West Herr can provide you with options - all in the no hassle, low pressure environment that has made West Herr famous.

Exhibit A, Page 3

[Finance Center](#) | [Credit Application](#) | [Send Application to a Salesperson](#) | [Credit Help](#) - [Southtowns](#) or [Northtowns](#)

#### Serving Buffalo for over 60 years!

The West Herr Automotive Group is owned and operated by local Western New Yorkers, and we are committed to seeing this area thrive. We are heavily involved in charitable activities in Buffalo with our main focuses being:

- [Roswell Park Cancer Institute](#)
- [Alzheimer's Assoc. of WNY](#)
- [The Buffalo Zoo](#)
- [Hospice Buffalo](#)
- [Meals on Wheels of WNY](#)
- [University of Buffalo Alumni](#)
- [Child and Family Services](#)
- [Erie County SPCA](#)
- [Erie Community College](#)

Click [HERE](#) for a more complete list of charities and organizations we are involved with. We look forward to seeing you out and about in the community. Make sure to say hi!

[Community Involvement](#) | [Steve Tasker](#)

Available by  
DEALER REQUEST



CONTACT ▶

DIRECTIONS ▶

PRIVACY ▶

SITEMAP ▶

## Complaint

## Exhibit B

Why Buy from West Herr Auto Group?

<http://www.westherr.com/west-herr-used-car-guarantee.htm>

West Herr Auto Group



Search New York State's Largest Inventory Over 6,500 Vehicles:

## Why Buy From West Herr?

Last year, we sold over 14,000 pre-owned vehicles

(<http://westherrauto.com/cms.dealer.com/all-inventory/index.htm?search=&accountId=&compositeType=used>). There were many reasons but here are a few...

**Selection**

With new vehicles arriving every day and over 1,200 used vehicles to choose from, West Herr has the largest pre-owned inventory in Western New York.

**Convenience**

Free vehicle transfers to any of our 18 locations. And most of our vehicles are prepped and ready for same day express delivery! Click the logo to learn more.

**Confidence**

Each vehicle goes through a rigorous multi-point inspection with our factory trained technicians. The service department grades each vehicle, and only the highest quality vehicles make it to our lots. We will never sell a vehicle with a branded title (flood damage, total loss, frame damage, etc.).

Only about 40% of the vehicles we take in on trade meet our standards. What happens to the other 60%? They get wholesaled (about 250 per week) at our auction, to other dealers in the area.

We prepare a complete history report on every vehicle. This is our 'storybook'. Inside, you will find a CARFAX report, all known service history, a detailed reconditioning report, consumer reviews, and market pricing comparisons.

**Price**

We know price is important to you. That's why we use several sophisticated internet pricing tools that allow us to scan the market on a daily basis for competitive vehicle information. We are constantly adjusting our prices to provide



the best value possible. We can show you the market comparison on any vehicle, comparing factors like mileage, condition, availability, and equipment.

We do not "mark them up to mark them down" - and have found that by putting a

## Contact a Used Car Manager

|                |                                            |
|----------------|--------------------------------------------|
| Choose A       | <input type="text" value="Please Select"/> |
| Location*      |                                            |
| First Name*    | <input type="text"/>                       |
| Last Name*     | <input type="text"/>                       |
| Contact Me by* | <input type="text" value="Please Select"/> |
| Phone*         | <input type="text"/>                       |
| Email*         | <input type="text"/>                       |
| Comments       | <input type="text"/>                       |

Exhibit B, Page 1

## Complaint

Why Buy from West Herr Auto Group?

<http://www.westherr.com/west-herr-used-car-guarantee.htm>

discounted price up front, the process is easier and more enjoyable for everyone - less negotiation, less stress.



The West Herr **IVPS** performs a comprehensive search of over 20,000 pre-owned vehicle websites every hour. These real-time results allow us to adjust our prices to the market and ensure you receive a fair price.

Also, look out for specially marked "Last Chance" vehicles for even more savings!

**WEST HERR**  
NEW YORK

**LAST CHANCE**

- Special Wholesale to Consumer Pricing
- Limited Time Only
- Soon the vehicle will be unlisted and no longer available!

FREE **CARFAX** ON EVERY VEHICLE

#### Satisfaction Guaranteed!

We want you to love your vehicle. So we have put together some of the most complete guarantees on the market. Most vehicles (all except value cars) come with a 3 day, 150 mile money back guarantee. All pre-owned vehicles from West Herr come with a 30 day, 1,000 mile exchange policy. So if you aren't completely satisfied with your vehicle, you can exchange it, no questions asked!



Exhibit B, Page 2

## Complaint

Why Buy from West Herr Auto Group?

<http://www.westherr.com/west-herr-used-car-guarantee.htm>

**PEACE OF MIND**

- 3 day / 150 mile Cash Refund
- 30 day / 1000 mile Exchange Policy
- 6 month/6000 mile Powertrain Warranty

FREE **CARFAX** ON EVERY VEHICLE



**WEST HERR**  
NEW YORK

**VALUE CARS**

- New York State Inspected
- 30 day / 1000 mile Exchange Policy
- Re-conditioning Report Included

FREE **CARFAX** ON EVERY VEHICLE



**WEST HERR**  
NEW YORK

**CERTIFIED**

- Rigorous Inspection & Reconditioning Standards
- Meets or Exceeds Factory Requirements
- Factory Backed Guarantees\*

\*varies by brand, see store for details

FREE **CARFAX** ON EVERY VEHICLE

Exhibit B, Page 3

## Complaint

Why Buy from West Herr Auto Group?

<http://www.westherr.com/west-herr-used-car-guarantee.htm>



## Complaint

## Exhibit C

**WEST HERR** LIVE CHAT Make, Model, etc. SEARCH

NEW Inventory USED Inventory SERVICE Your Vehicle CONTACT Our Automotive Group View Saved Alerts Login

☐ Dodge (49)  
☐ Ford (247)  
☐ GMC (42)  
☒ Honda (57)  
☐ HUMMER (2)  
☐ Hyundai (35)  
☐ Infiniti (11)  
☐ Jaguar (2)  
☐ Jeep (32)  
☐ Kia (47)  
☐ Lexus (72)  
☐ Lincoln (14)  
☐ Mazda (11)  
☐ Mercedes-Benz (53)  
☐ Mercury (8)  
☐ MINI (7)  
☐ Mitsubishi (5)  
☐ Nissan (66)  
☐ Pontiac (12)  
☐ Ram (9)  
☐ Saturn (8)  
☐ Scion (3)  
☐ Subaru (20)  
☐ Toyota (194)  
☐ Volkswagen (13)

Model Features Mileage Body Style Body Style - Advanced Exterior Color Interior Color Interior Material Transmission

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**2008 Honda Civic LX**

Mileage: 100331  
Drive Line: Front-wheel Drive  
Engine: 1.8L I-4 cyl  
Transmission: Compact 5-Speed Automatic  
Exterior Color: Alabaster Silver  
Interior Color: Gray  
Stock #: FAE50028A

Kelley Blue Book: **\$8,667**  
West Herr Discount: **-\$768**  
Price: **\$7,899**

[CHECK AVAILABILITY](#)

[Save This Car!](#) [Get Price Alerts](#) Compare ☐

---

**2005 Honda Civic EX**

Mileage: 75322  
Drive Line: Front-wheel Drive  
Engine: 1.7L I-4 cyl  
Transmission: 4-Speed Automatic with Overdrive  
Stock #: CW16P360

Kelley Blue Book: **\$9,641**  
West Herr Discount: **-\$766**  
Price: **\$8,875**

[CHECK AVAILABILITY](#)

[Save This Car!](#) [Get Price Alerts](#) Compare ☐

---

**2006 Honda Civic EX**

Mileage: 58229  
Drive Line: Front-wheel Drive  
Engine: 1.8L I-4 cyl  
Transmission: Compact 5-Speed Automatic  
Exterior Color: Alabaster Silver  
Interior Color: Gray  
Stock #: SUK141575A

Kelley Blue Book: **\$11,564**  
West Herr Discount: **-\$2,606**  
Price: **\$8,958**

[CHECK AVAILABILITY](#)

[Save This Car!](#) [Get Price Alerts](#) Compare ☐

---

**2008 Honda Fit Sport**

Mileage: 65150  
Drive Line: Front-wheel Drive  
Engine: 1.5L I-4 cyl  
Transmission: 5-Speed Automatic  
Exterior Color: Nighthawk Black Pearl  
Interior Color: Black  
Stock #: HLC150487A

Kelley Blue Book: **\$9,929**  
West Herr Discount: **-\$364**  
Price: **\$9,565**

[CHECK AVAILABILITY](#)

[Save This Car!](#) [Get Price Alerts](#) Compare ☐

## Complaint

## Exhibit D

**WEST HERR** NEW YORK

LIVE CHAT

[NEW Inventory](#)
[USED Inventory](#)
[SERVICE Your Vehicle](#)
[CONTACT Our Automotive Group](#)
[Viewed](#)
[Saved](#)
[Alerts](#)
[Login](#)

**PHOTOS** VIDEO



**WEST HERR** NEW YORK **CHEVROLET of WILLIAMSVILLE**  
8040 Transit Road  
(716) 632-5110







**Comments**

Power moonroof. Manufacturing know-how and how! Built to last. Tired of the same ho-hum drive? Well change up things with this super-looking 2005 Honda Civic. It is nicely equipped with features such as 98 Point Vehicle Inspection, NEW Oil & Filter Change, Power moonroof, and Professionally Detailed. New Car Test Drive said, "...you can't go wrong buying a Honda Civic...They are reliable, practical, and fuel efficient...fun to drive and all models offer excellent handling..." Have one less thing on your mind with this trouble-free Civic. Visit [www.realdail.com/latbyd](http://www.realdail.com/latbyd) to view a Free Price Check! This is a West Herr Chevy of Williamsville Value car. Just click on the image for your free car fax. Visit [www.realdail.com/latbyd](http://www.realdail.com/latbyd) to view a Free Price Check! This is a West Herr Chevy of Williamsville Value car.

**Detailed Specifications**

**Convenience Features**

|                        |                       |                         |
|------------------------|-----------------------|-------------------------|
| 1-touch down           | Speed control         | Remote keyless entry    |
| Driver vanity mirror   | Illuminated entry     | Passenger vanity mirror |
| Tilt steering wheel    | Rear beverage holders | Driver door bin         |
| Air conditioning       | Power windows         | Power moonroof          |
| Front beverage holders | Passenger door bin    |                         |

[READ MORE](#)

**VALLE CARS**

**Detailed Pricing**

Kelley Blue Book **\$9,501**  
West Herr Discount **-\$726**

**Price \$8,775**

[CHECK AVAILABILITY](#)

[CALCULATE PAYMENTS](#)

[Save This Car!](#) [Get Price Alerts](#)

**Contact**  
West Herr Chevrolet  
Williamsville  
Call **716-632-5110**

 **31mpg** City **38mpg** Hwy  
 **1.7L I-4 Cyl**  
 **4-SPEED AUTOMATIC WITH OVERDRIVE**  
 **Front-Wheel Drive**  
 **Exterior Color: Magnesium**  
 **Interior Color: BLACK**  
 **Mileage: 75,324 Miles**  
**Stock #: CW14P364**  
**Condition: Used**  
**VIN: 1HGEN2375806131**

 **CARFAX**  
 **FREE PRICE CHECK**

[SCHEDULE A TEST DRIVE](#)

**Trade-In Appraisal**

**Directions**



[GET DIRECTIONS](#)

## 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) statements 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 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 West-Herr Automotive Group, Inc., is a New York corporation, with its principal office or place of business at 3552 Southwestern Blvd, Orchard Park, New York 14127.
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 West-Herr Automotive Group, Inc., and its successors and assigns.
- B. “Advertisement” shall mean a commercial message in any medium that directly or indirectly promotes a consumer transaction.
- C. “Clearly and conspicuously” shall mean that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
  - 1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be made through the same means through which the representation requiring the disclosure is presented.
  - 2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
  - 3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

## Decision and Order

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 indirectly, in connection with the marketing, advertising, offering for sale, or

## Decision and Order

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.

- B. Misrepresent the following:
  - 1. Whether there is or is not an open recall for safety issues for any used motor vehicle;

## Decision and Order

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, 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 June 30, 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://vinrel.safercar.gov/vin/>. That site also provides information on how to get your vehicle fixed if it's been recalled.”

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

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

For purposes of Subpart (A) of this proviso, records showing that the vehicle was not listed as subject to an open recall for a safety

## Decision and Order

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](http://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](http://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 in ways not related to any representations covered by this order;
- B. All materials that were relied upon in disseminating the representation;

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

**IV.**

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

**V.**

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

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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 West-Herr Automotive Group, 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 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

## Statement of the Commission

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.

**Statement of the Federal Trade Commission  
Concerning Auto Recall Advertising Cases<sup>1</sup>  
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.<sup>2</sup> 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.

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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](https://www.nhtsa.gov/About-NHTSA/Press-Releases/nhtsa_launches_safe_cars_save_lives_campaign_01212015).

## Statement of the Commission

Section 5 of the Federal Trade Commission Act, however, enables the Commission to stop car sellers from engaging in false 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.<sup>3</sup>

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

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<sup>3</sup> 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).

## Statement of the Commission

recall status of a particular car, and (2) the claims are not otherwise misleading.<sup>4</sup>

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.<sup>5</sup>

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

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

## Statement of the Commission

may be subject to open recalls and do not misrepresent the recall status or safety of their cars.<sup>6</sup>

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.

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<sup>6</sup> 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

**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 West-Herr Automotive Group, 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 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 the respondent has posted advertisements on the website [www.westherr.com](http://www.westherr.com) regarding the advantages of buying from West-Herr that have made the following representations:

“Each vehicle goes through a rigorous multi-point inspection with our factory trained technicians. The service department grades each vehicle, and only the highest quality vehicles make it to our lots. ...

## Analysis to Aid Public Comment

Only about 40% of the vehicles we take in on trade meet our standards. What happens to the other 60%? They get wholesaled (about 250 per week) at our auction, to other dealers in the area.”

Even though it makes such claims, the respondent has allegedly advertised on its websites 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 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 consumers who purchased from it a used motor vehicle between July 1, 2013 and June 30, 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 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

*Analysis to Aid Public Comment*

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

**ENBRIDGE INC.  
AND  
SPECTRA ENERGY CORP.****CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF  
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND  
SECTION 7 OF THE CLAYTON ACT**

*Docket No. C-4604; File No. 161 0215  
Complaint, March 22, 2017 – Decision, March 22, 2017*

This consent order addresses the \$28 billion acquisition by Enbridge Inc. of certain assets of Spectra Energy Corp. The complaint alleges that the Merger, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by substantially lessening competition for the transportation of natural gas from wells in certain natural gas producing areas in the Gulf of Mexico to processing plants or interconnects with other natural gas pipelines. The complaint further alleges that after the Merger, Enbridge will have access to competitively sensitive information of its competitor, the Discovery Pipeline, and gain voting rights over the Discovery Pipeline's significant capital expenditures, including expansions needed to connect to new wells. The consent order requires Enbridge to erect firewalls to limit its access to non-public information relating to the Discovery Pipeline.

*Participants*

For the *Commission*: Keitha Clopper, Eric Cochran, and Holly Vedova.

For the *Respondents*: Joseph Matelis, Sullivan & Cromwell LLP; Nelson Fitts, Wachtell, Lipton, Rosen & Katz LLP.

**COMPLAINT**

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Enbridge Inc. ("Enbridge") has entered into a transaction with Respondent Spectra Energy Corp ("Spectra"), that such transaction, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade