Specifically, Paragraph I of the order requires the respondent to cease and desist from failing to follow reasonable procedures to assure the accuracy of the information that respondent maintains with respect to cardholder accounts that respondent has acquired or acquires from other retail sellers of consumer goods or services and that respondent provides to consumer reporting agencies, including but not limited to the accuracy of dates or relevant actions.

Paragraph II of the order requires respondent, to the extent not already accomplished, within ninety (90) days of service of the order, to identify current cardholders on whom, since January 1, 1992, respondent has reported incorrectly to any consumer reporting agency derogatory information related solely to the cardholder's open end credit plan account with an acquired creditor. The respondent must instruct each consumer reporting agency, in writing, to remove or correct any such derogatory information.

Paragraph III of the order requires respondent, after written notice from a consumer to its Bill Adjustment Department in accordance with the Fair Credit Billing Act of a failure by respondent accurately to ascribe charges, credits, payments, or other activity to the correct account, to cease collection activity as to the disputed amount, either directly or through any third party, or any outstanding balance that is due, in whole or in part, to respondent's failure accurately to ascribe charges, credits, payments, or other activity to the correct account.

Paragraph IV of the order requires that the respondent institute reasonable procedures to train their collection personnel in the obligations of the Fair Credit Billing Act, and to further train their collection personnel to inform consumers who assert billing errors of the correct address of respondent's Bill Adjustment Department.

Paragraph V of the order requires respondent to cease and desist from issuing credit cards to any person except (1) in response to an oral or written request or application for the card; or (2) as a renewal of, or substitute for, an accepted credit card.

Paragraph VI of the order requires the respondent to make documents demonstrating compliance with the requirements of the order available to the Federal Trade Commission for inspection and copying.

Paragraph VII of the order requires respondent for a period of five years to deliver a copy of the order to all present and future personnel, agents, or representatives having responsibilities with respect to the subject matter of the order.

Paragraph VIII of the order requires that the respondent promptly notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the Order.

Paragraph IX of the order is a provision terminating the order in twenty years from the date of its issuance, or twenty years from the most recent date that the Untied States or the Federal Trade Commission files a complaint in federal court alleging any violation of the order, whichever comes later.

Paragraph X of the order requires respondent within one hundred and eighty (180) days of the date of service of the order, to file with the Commission's Division of Enforcement, a written report setting forth in detail the manner and form in which it has complied with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–10561 Filed 4–29–96; 8:45 am]

BILLING CODE 6750–01–M

Request for Comments Concerning Disclosures in the Resale of Vehicles Repurchased Due to Warranty Defects

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (''the Commission'' or ''FTC'') is requesting public comment and holding a public forum concerning the practices of motor vehicle manufacturers, their franchised dealers, and other firms and individuals in the resale of allegedly defective vehicles previously repurchased from consumers because of warranty defects. This notice sets forth a statement of the Commission's reasons for requesting public comment, a list of specific questions and issues upon which the Commission particularly desires written comment, an invitation for written comments, and an invitation to participate in the public forum.

On November 8, 1995, the Consumers for Auto Reliability and Safety and other consumer groups (''Consumer Coalition'' or ''Petitioners'') filed a petition in which they requested that the Commission initiate either a rulemaking proceeding or an enforcement action regarding the alleged industry practice of reselling vehicles repurchased due to defects without disclosure of the vehicle's prior history to the subsequent purchaser. The Commission is publishing this petition without endorsing or supporting the views expressed therein. The Commission is seeking public comment and holding a public forum on the issues raised by the petition and on other related issues.

DATES: Written comments will be accepted until June 28, 1996. Notification of interest in participating in the public forum also must be submitted on or before June 28, 1996. The public forum will be held in Washington, D.C. on July 15, 1996, from 9 a.m. until 5 p.m.

ADDRESSES: Five paper copies of each written comment should be submitted to the Office of the Secretary, Room 159, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all comments should also be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.) Individuals filing comments need not submit multiple copies or comments in electronic form. Comments should be identified as ''Vehicle Buybacks—Comment. FTC File No. P96 4402.''

Notification of interest in participating in the public forum should be submitted in writing to Carole I. Danielson, Division of Marketing Practices, Federal Trade Commission, Sixth and Pennsylvania Ave., N.W., Washington, D.C. 20580. The public forum will be held at the Federal Trade Commission, Sixth and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Carole I. Danielson (202) 326–3115, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

Section A. Background

Traditionally, automobile manufacturers have bought back allegedly defective vehicles from consumers in only the most exceptional circumstances. Although the Uniform Commercial Code gave buyers a right to elect other remedies if a product was seriously defective, the remedy ordinarily available to consumers was limited to repairs, as expressly provided by the terms of the written warranty. Buybacks were granted only rarely, and usually on the basis of goodwill. This situation changed with the advent of state lemon laws. Beginning in 1982, state legislatures began enacting ''lemon laws'' to improve consumers' remedies for new vehicle problems. These laws give consumers the right to a replacement or a refund if their new cars cannot be repaired under warranty. Under these lemon laws, if a specified number of repair attempts fails to correct a major problem, or if a new car has been out of service for repair for the same problem for a cumulative period of thirty days or more within the one year following delivery of the vehicle, the manufacturer must either replace the car or refund the full purchase price, less a reasonable allowance for the consumer's use of the car prior to reporting the defect. All 50 states and the District of Columbia now have enacted such statutes. Since the state lemon laws were enacted, consumers can more easily obtain relief requiring manufacturers to repurchased allegedly defective vehicles.

Most state lemon laws require consumers to notify the manufacturer of their intention to assert their lemon law rights before exercising those rights. In addition, most states require the consumer to submit the dispute to an informal dispute settlement mechanism before pursuing their lemon law rights in court. This mechanism may be an arbitration program established or staffed by the state (such as the Florida and Washington State arbitration programs), offered by the manufacturer (such as the Ford Consumer Appeals Board or the Chrysler Customer Arbitration Board), or offered through third-party organizations (such as the BBB's AUTO LINE or the National Automobile Dealers Association's AUTOCAP programs). After reviewing the evidence submitted, these arbitration programs may impose a wide range of remedies, including requiring the manufacturer or dealer to replace the defective vehicle or refund the full purchase price.

Some vehicles that have been replaced or bought back (''repurchased vehicles'' or ''buybacks'') under the state lemon laws are resold to other consumers as used cars. To protect subsequent buyers, approximately 36 states and the District of Columbia have enacted legislation requiring manufacturers and dealers to disclose to subsequent buyers that a used vehicle was repurchased because it was found to be defective or to have non-conformities under the state lemon law. The state laws vary as to how this disclosure is to be made. Some states require the vehicle's title to be branded; others require that the consumer be given a disclosure document at the time of sale or that the disclosure be placed on the vehicle. The state laws also vary regarding which vehicles are subject to the disclosure requirement. Some states require disclosure on all buyback vehicles, including those repurchased under voluntary settlements, while other states require disclosure on only certain vehicles (e.g., where there was a final arbitration decision). In addition, some states prohibit reselling a repurchased vehicle with a serious safety defect within the state.

Despite these state laws, subsequent buyers of repurchased vehicles may not be receiving the intended disclosures. In a petition dated November 8, 1995, the Consumer Coalition requested that the FTC either initiate a rulemaking proceeding or an enforcement action in connection with the industry practice of allegedly reselling vehicles bought back because of defects without disclosure to the used car purchaser. The petitioners allege that auto manufacturers, their dealers and others are engaged in a pattern of conduct (which the petitioners term ''lemon laundering'') intended to conceal from used car buyers material information about the vehicle's safety and quality history. The petitioners also allege that this pattern of conduct often involves transporting the repurchased vehicles across state lines to avoid the operation of state law protections. A copy of the petition is appended to this Notice as Attachment 1.

Section B. Invitation To Comment

The Commission invites written comments to assist it in ascertaining the facts necessary to reach a determination on the issues raised by the petition and on Petitioners' request. Written comments must be submitted to the Office of the Secretary, Room 159, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W. Washington, D.C. 20580, on or before June 28, 1996. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission regulations, on normal business days between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Section, Room 130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Section C. Public Forum

The FTC staff will conduct a Public Forum to discuss the written comments received in response to the Federal Register notice. The purpose of the forum is to afford Commission staff and interested parties a further opportunity to openly discuss and explore issues raised in the petition and in the comments, and, in particular, to examine publicly any areas of significant controversy or divergent opinions that are raised in the written comments. The conference is not intended to achieve a consensus opinion among participants or between participants and Commission staff with respect to any issue raised in the comments. Commission staff will consider the views and suggestions made during the conference, in conjunction with the written comments, in formulating its final recommendation to the Commission concerning what action, if any, to take in response to the petition.

Commission staff will select a limited number of parties, from among those who submit written comments, to represent the significant interests affected by the petition. These parties will participate in an open discussion of the issues, including asking and answering questions based on their respective comments. In addition, the forum will be open to the general public. The discussion will be transcribed and the transcription placed on the public record.

To the extent possible, Commission staff will select parties to represent the following interests: Auto manufacturers, new and/or used auto dealers, operators of auto auctions, consumer groups, Federal, State and local law enforcement and regulatory authorities; and any other interests that Commission staff may identify and deem appropriate for representation.

Parties who represent the above-referenced interests will be selected on the basis of the following criteria:

1. The party submits a written comment during the 60-day comment period.

2. The party notifies Commission staff of its interest by June 28, 1996.

3. The party's participation would promote a balance of interests being represented at the forum.

4. The party's participation would promote the consideration and discussion of a variety of issues raised in the petition.

5. The party has expertise in activities affected by the petition.

6. The number of parties selected will not be so large as to inhibit effective discussion among them.

The forum will be held on July 15, 1996. Parties interested in participating in the forum must notify Commission staff by June 28, 1996. Prior to the forum, parties selected will be provided with copies of the comments received in response to this notice.

Section D. Issues for Comment

The Commission seeks comments on various issues raised by the petition. Without limiting the scope of the issues it seeks comments on, the Commission is particularly interested in receiving comments on the questions that follow. Responses to these questions should be itemized according to the numbered questions below, to which they correspond. In responding to these questions, include detailed, factual supporting information whenever possible.

1. How many vehicles are repurchased each year by manufacturers? How many vehicles are repurchased each year by dealers? What is the disposition of these vehicles? How many are resold to consumers? How many are resold within the same state? How many are transported to another state and resold. What happens to those not resold?

2. How many of the repurchased vehicles are successfully repaired after they are bought back? Are there studies showing whether subsequent purchasers of these repurchased vehicles encounter a frequency of repair that is greater than, equal to, or less than that of purchasers of non-repurchased used cars of like models and model years?

3. At what stage should a car be considered a buyback for the purposes of imposing a disclosure requirement? Should *any* car that is taken back by the manufacturer at any stage in a dispute over alleged defects be considered a buyback? If not, under what circumstances should a vehicle be considered a buyback? Should only those vehicles in which there has been an impairment of value be considered a buyback? If so, how should ''impairment in value'' or any similar limiting term be defined? Since manufacturer buybacks are only one segment of the buyback market, how can defective vehicles bought back by the dealer and/or traded in by consumers be identified?

4. If ''buybacks'' are defined to include those repurchased prior to the initiation of arbitration or litigation, would disclosure laws cause a chilling effect on manufacturers' willingness to make such ''goodwill'' repurchases? On the other hand, would disclosure laws that only cover cars that were the subject of a formal arbitration or litigation proceeding lead manufacturers to buy back more vehicles under the heading of ''goodwill'' in order to avoid the disclosure requirement?

5. How long should a vehicle be considered a''buyback''? Permanently? Until successfully repaired? Some other time period? How can it be determined whether a vehicle has been successfully repaired prior to reselling it?

6. What are the current practices of auto manufacturers, auction companies, and dealers regarding disclosure of the fact that a vehicle is a buyback to subsequent purchasers? What types of disclosures are given? Are these disclosure methods effective? Are consumers receiving the disclosures? Who is responsible for ensuring that disclosures are made to the consumer? Are the disclosures specific enough to identify or reveal the vehicle's previous history and the repairs performed? What are the costs and/or benefits of these disclosure methods to manufacturers? To auction companies? To dealers? To consumers? To other parties?

7. What methods are or would be most effective in getting information about a vehicle's history and prior repairs to consumers *before* they buy the vehicle? Title branding? Disclosure documents to be given to consumers? Other methods? If disclosure laws are the most effective method, then what type of disclosure requirement should be imposed? What are the costs and/or benefits of these various methods?

8. What methods have been adopted by the various States to ensure that subsequent purchasers are advised that vehicles are buybacks? How effective have these methods been? What have been the costs and benefits of these State requirements to manufacturers? To auction companies? To dealers? To consumers? To the States?

9. If disclosure or title branding laws are or would be most effective, how should any such disclosure or title branding rules be enforced? By FTC regulation? By model State law? By a national databank of VIN numbers? By other means?

10. Uniformity in the disclosure and labeling of repurchased vehicles might resolve the problem of interstate shipment of vehicles to avoid individual state requirements. What are the costs and/or benefits of diverse State requirements versus those of uniformity? Would a uniform national standard be an effective method to get buyback information to subsequent purchasers? What would be the costs and/or benefits of a national standard?

List of Subjects

Used cars, Warranties, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

Attachment I

Consumers for Auto Reliability and Safety

Advancing Auto Reliability and Safety Since 1979

November 8, 1995

Donald S. Clark, Secretary,
Federal Trade Commission, 6th & Pennsylvania Ave., NW., Washington, DC 20580

Re: Petition for Investigation of ''Lemon'' Motor Vehicle Resale Practices

Dear Secretary: Petitioners submit this petition to the Federal Trade Commission (hereinafter, ''FTC'', or ''Commission''), requesting an investigation of certain practices of new motor vehicle manufacturers, their franchised dealers, and others in the resale of defective vehicles. Petitioners request that the Commission initiate either rulemaking proceedings or an enforcement program under Section 5 of the FTC Act,[1] to stop the industry practice of reselling ''lemon'' cars without disclosure to the used car purchaser.

Petitioners contend that these practices are deceptive and unfair, and that they are carried out in knowing disregard of the laws and policies of many states that regulate the resale of vehicles which have been deemed ''lemons.''

Over the last several years, investigations conducted by state law enforcement officials and by reporters for national news bureaus have uncovered a pattern of conduct in the resale of defective vehicles, conduct which is intended to conceal from used car buyers material information about the vehicle's safety and quality history. These practices evidence a pattern of deception that substantially injures consumers, passing on to the second retail purchaser the very losses that lemon laws were designed to prevent. Often these practices involve the transport of vehicles across state lines to avoid the operation of state law protections.

Petitioners consider this practice, known as ''lemon laundering,'' to be an unfair and deceptive trade practice under Section 5 of the FTC Act. Because the practices necessitate the use of interstate commerce to subvert the operation and purpose of state laws designed to protect used car buyers, Commission action is both appropriate and necessary.

[1] 15 U.S.C. Sec. 45.

Background

No consumer product generates more consumer complaints, or more economic injury, than the automobile. The National Association of Attorneys General's nationwide survey of consumer complaints, released in April, 1994, listed automobile-related complaints at the top.[2] This finding is echoed by the survey report issued by the Consumer Federation of America and the National Association of Consumer Agency Administrators[3]: no doubt the FTC's experience confirms the accuracy of this finding.

In 1991, the National Association of Attorneys General (NAAG) adopted a resolution calling for mandatory disclosures in the resale of ''lemon'' vehicles. NAAG's statement reads, in part, as follows:

''At least 50,000 vehicles with serious safety defects or non-conformities are repurchased by manufacturers or dealers annually through arbitration, litigation or through settlements as a result of the various state lemon laws, representing a potential $750 million loss.

''Many of those vehicles are subsequently resold at auction or by used car dealers and thus recycled back into the marketplace, back onto the streets, and back into repair shops.

''Many states do not have adequate legal protection for the unwitting consumer purchasers of lemon law 'buyback' vehicles.''[4]

Even with statutory protections in some states, the practices continue to be widespread, in large part due to the ease with which vehicles can be moved to or through states with weak or no protections for used car buyers. This enables sellers to remove the ''lemon'' label from the used car transaction. It is this particular practice which constitutes ''lemon laundering.''

The national scope of the problem is brought into clearer focus when the safety implications are considered. Many new car ''lemons'' resold in the used car market have severe safety defects, which were not addressed by safety recalls. Undoubtedly these unsafe used car ''lemons'' contribute to the enormous economic and human toll exacted by motor vehicle crashes. It is well documented that motor vehicle crashes are the leading killer of Americans under the age of 35, and the leading cause of head injuries, epilepsy, quadriplegia, paraplegia, and facial injuries, as well as a significant cause of blindness.

It is petitioners' contention that consumers purchasing used cars are entitled to full, clear and timely disclosure of the status of vehicles deemed ''lemons,'' if not under state laws then under the Uniform Commercial Code provisions against unconscionability, under Section 5 of the FTC Act, and as a matter of public policy.

Federal and State ''Lemon'' Laws Primarily Protect New Car Buyers

After the passage in 1976 of The Magnuson-Moss Warranty Act with its Federal private right of action for products covered by a ''full'' warranty,[5] all 50 states and the District of Columbia enacted new car ''lemon laws'' to protect new car buyers. Typically these statutes denominate a vehicle as a ''lemon'' by the number of times a repair is attempted without success, or by the period of time a vehicle is out of service for warranty repairs. The statutes generally create a private cause of action with remedies of replacement or refund of the purchase price, incidental costs, and, in many states, attorney fees. Many state laws encourage settlements through state-sponsored or state-certified arbitration.

The measure of success of these laws and programs is their widespread use: The Center for Auto Safety estimates that over 50,000 vehicles are repurchased annually by manufacturers as a result of arbitration decisions or legal settlements.[6] Thus, substantial economic losses to many new car buyers are prevented by the ''lemon'' laws.

In the wake of the success of these state laws is the secondary harm to consumer buyers in the used car market. Petitioners see continuing consumer injury to used car buyers who have no way to distinguish between ordinary used cars and those that have had defects that the manufacturer was unwilling or unable to repair, defects which are so severe as to warrant their repurchase under state laws.

Manufacturers and dealers frequently mislead consumers by characterizing defective ''lemon'' vehicle buybacks as ''goodwill'' or ''customer satisfaction'' repurchases, particularly when the repurchase is made as settlement to a potential or actual lawsuit. The National Association of Attorneys General Working Group on Resold Lemons examined this issue and concluded that vehicles repurchased through such voluntary agreements should be designated as ''Defective Vehicle Buybacks,'' just as are all adjudicated ''lemons.'' The group's report goes on to note that, otherwise,

''If voluntary buybacks were not included in this definition, manufacturers would be able to avoid the disclosure requirements by entering into voluntary agreements with consumers to buy back or replace those vehicles which are most seriously defective and would most likely be adjudicated as lemons. Subsequent consumer purchasers would then have no knowledge of the 'lemon' history of these vehicles.

''Some manufacturers may argue that the use of the phrase 'Defective Vehicle Buyback' is not fair or accurate because vehicles are also bought back on a 'goodwill' basis which are not defective. The Working Group is not convinced that vehicles which are free from any alleged defects are routinely repurchased by manufacturers and dealers. If there are goodwill repurchases, the numbers are not significant.'' NAAG Working Group Report Summary, November 1, 1990.

It is important to understand the typical distribution channels for new car ''lemon buybacks,'' as they are known. State laws require that the manufacturer who gives the warranty. and not the dealer, repurchase the car. As noted above, many ''lemon buybacks'' are disguished by the manufacturer and dealer, working in concert, who arrange for the transaction to appear as a trade-in or, as they are known in the industry, ''trade assists.'' When manufacturers *do* repurchase vehicles as prescribed in the ''lemon laws'', they reintroduce the vehicle into the used car wholesale market typically through ''closed'' auctions, where only franchised dealers for that same make of vehicle are invited. The vehicle may be sold on the used car lot of the dealer purchaser at auction, or the title may change hands several times before being resold to the public.

On the used car lot of a franchised dealer, the car will be shown alongside other late model, low mileage cars. These may be recent trade-ins, or cars returned to the dealer after a period of use as a daily rental, salesperson's demonstrator, manufacturer executive vehicle, or dealer ''loaner'' car. There is nothing in the appearance of lemon buybacks that would make them identifiable to the used car buyer.

To address the ''downstream'' problem of the resale of ''lemons'', thirty six states and the District of Columbia have enacted disclosure laws. These take various forms, but can include requirements for one or more of the following disclosures: an on-vehicle sticker; a special form that must be acknowledged by the used car buyer at the time of purchase; or a ''branding'' of the vehicle title. Five states forbid the resale in that state of lemons found to have had serious safety defects. The effect of these various state laws, though, is to create a great incentive for manufacturers and dealers to move the cars out of the state in which they are determined to be ''lemons'' and into a non-disclosure state, or at least into another state where dealers find the disclosures non-threatening, (i.e., ineffective in warning buyers).[7]

The practice of moving ''lemon buybacks'' to other states is extensive. Public accounts of a State of Florida investigation still underway shows that about 60 percent of buybacks in the state are resold in other states.[8] Documentation of buybacks by the Lemon Law Administrator for the State of Washington shows that over a 5 year period, 324 of the 452 buybacks, or 71 percent, were next titled in another state, mostly in Oregon and Utah, but also as far away as North Carolina, Virginia, and New Jersey.[9]

[2] ''Top 10 Consumer Complaint List'', National Ass'n of Attorneys General, Washington, DC, April, 1994.

[3] ''Fourth Annual Survey of Consumer Protection Agencies,'' National Ass'n. of Consumer Agency Administrators and Consumer Federation of America, Washington, DC, October, 1995.

[4] NAAG Resolution, ''Mandatory Disclosures in the Resale of Lemon Vehicles'', adopted at Winter Meeting, Ft. Lauderdale, FL, December, 1991.

[5] 15 U.S.C. Sec. 2310.

[6] Center for Auto Safety letter to NAAG, May 1, 1995.

[7] Disclosure forms required in some states are presented at the time of sale, along with a raft of other forms to sign, and are easily overlooked. Disclosures on the vehicle title may not be seen at all by the used car purchaser financing the purchase, as the title goes directly to the finance company.

[8] ''Do You Own a Lemon?'', *Palm Beach Post*, June 18, 1995, 1A. (The Florida AG's office declines comment on this account as its investigation is pending.)

[9] Letter from Paul N. Corning, Lemon Law Administrator, State of Washington, October 27, 1995.

The used car buyer of a ''laundered'' lemon not only pays too much for the car due to the deceptive non-disclosure of the car's history, but that buyer also enjoys few of the legal protections that work for new car buyers. Many state lemon laws do not apply at all; others offer only some of the protections accorded new car buyers. Even so, it is not clear there is any practical way for the used car buyer to look back into the vehicle's history and to discover the deception, unless the consumer could somehow gain access to state motor vehicle records in the state of original sale.

Moreover, even if a used car buyer were to later discover the deception in the sale of their vehicle without the state-mandated disclosure, their remedies are rarely equivalent to those accorded the new car ''lemon'' buyer. Individual actions for fraud under state law are difficult to sustain, absent statutory provisions for special remedies and attorneys fees recovery. Faced with the high cost of waging suit for fraud or deception, the aggrieved used car buyer is more likely to resell or trade in the car at a substantial loss. While understandable, this only passes the problem on to the next used car buyer.

''Lemon Laundering'' Imposes an Economic Injury on the Used Car Buyer

The model intended by the state lemon laws is that the new car buyer is made whole by recovering the original value of the bargain, either through a refund or replacement with a new vehicle, plus the costs associated with enforcing the right. Under the model, these costs are returned to the manufacturer, where they should be borne. (The costs are not a penalty, but an incentive to manufacturers to produce fewer lemons, and to provide good warranty service to correct defects as they arise.) The manufacturer's costs, then, are the difference between the refunded original retail price of the car, and the depreciated price paid for the vehicle at auction. One would reasonably expect the auction price to reflect the fact that the ''lemon'' disclosure will depress the vehicle's resale value on the used car lot—that is, *if* the label does in fact appear there. ''Lemon laundering'' allows the manufacturer to avoid this rather significant portion of these costs, thus undermining the market-perfecting incentives on which the lemon laws are premised.

The economic loss can only be avoided by the used car buyer care who sees an effective ''lemon'' label, and who can then secure a reduced price or negotiate for warranty or service contract protection against a reoccurrence of the ''lemon'' problem. When the label is removed (or effectively concealed), the apparent value of the vehicle is increased, and the vehicle can be resold as if that car never had any severe safety or quality defects. Since the manufacturer and the dealer at the wholesale auction both implicitly understand that ''laundering'' the label is possible (perhaps with only the cost of moving the car to another state), the manufacturer can realize nearly the full wholesale price. Even where the manufacturer complies with a state disclosure law, the temptation of a dealer to ''launder'' the lemon disclosure is great—when resold in a non-disclosure state at a higher price, the dealer realizes an extra profit in the transaction. In either case, with or without manufacturer collusion, the loss is shifted to the consumer used car buyer.

The warranty that comes with the used vehicle will likely be of little value—the seller will be sure to offer only a very restrictive warranty or, as the Commission found in the course of its Rulemaking,[10] the vehicle may be sold ''as is,'' or with a warranty that requires substantial and unlimited buyer co-payments for repairs (so-called ''50-50 warranties,'' wherein 50 per cent of the repair costs, *as computed by the seller*, are assessed to the buyer).

The Commission Can Augment State Protections for Used Car Buyers, Without Preempting Them

The Commission's jurisdiction over used car sales is self-evident.[11] The remaining question, then, is why the FTC should enter this area when some states have addressed the problem through disclosure laws. The commission should act for the same reasons the Commission acts in so many areas touched on by state consumer protection laws: certain aspects of the problem can only be addressed by a Federal action, because state laws can be defeated by moving the transaction out of the jurisdiction, and because varying state standards allow a type of ''forum-shopping'' that defeats statutory protections.

In the used car market, vehicles move about the wholesale market through a web of brokers, auctions, and even through multi-state chain franchisees. This interstate nature of the market enable ''lemon laundering'' to persist even though the practice is circumscribed in some states.

Petitioners believe that Federal protections fashioned by the Commission can supplement and complement state laws, and need not preempt them.

There are several areas of potential action by the Commission. One would be a re-examination of the Used Motor Vehicle Trade Regulation Rule (''TRR''), with the possible addition of a disclosure on the Federal window sticker that would recognize the ''lemon'' label from any jurisdiction. Alternatively, we believe an FTC investigation, in conjunction with knowledgeable state officials, will uncover the methods by which manufacturers in concert with dealers and auction firms ''launder'' lemon disclosures through transactions whose primary purpose is to defeat the protections of state disclosure laws. This practice should be declared an unfair or deceptive trade practice through litigation. Commission cases against dealers and dealer chains are a valuable tool for enforcement and a strong deterrent; the Commission's own enforcement ''sweeps'' of use car dealers for TRR violations are an effective example of Federal enforcement, one that should be applied to lemon laundering practices. Petitioners are confident the Commission can fashion a non-burdensome disclosure and record-keeping scheme that will put an end to the practice.

There is Ample Precedent for FTC Intervention in Matters That are Partly Addressed Under State Law, but Where the Remedies are Insufficient To Protect Consumers

Considerable Commission precedent exists for FTC action here. Petitioners note that the Commission historically has actively engaged issues which have been partly, but not altogether successfully, addressed by state consumer protection laws.

Petitioners refer to the Commission to its actions against automobile manufacturers in the so-called ''secret warranty'' cases,[12] where disclosure schemes were erected to make sure that vehicle owners received from manufacturers material information regarding non-safety defects and warranty extensions. Once disclosed, the information enabled consumers to protect themselves in two ways. In some cases, consumers were able to prevent damage to their cars by seeking early repairs. In others, they were able to have the costs of repair borne under manufacturer extend warranty policies, which before the Commission's orders had been closely guarded and allowed by the manufacturers in only selective cases. The Section 5 theory relied upon by the Commission in those actions applies equally to the matter at hand.

Petitioners also cite the Commission's actions against Paccar, Inc. and other large truck manufacturers to remedy the harmful effects of deception in vehicle sales.[13] In the order entered in *Paccar* and companion cases, the Commission ended a practice of truck manufacturers who, at the end of a ''model year,'' applied to state titling authorities (where not prohibited by state policies) to redesignate the title of unsold vehicles to show a new, updated model year. This had the effect of avoiding the drop in sale value of older unsold trucks on dealer lots when the new model year units are also for sale. The Commission took the position that the practice was deceptive. This closely parallels the situation in lemon laundering: critical information is concealed (model year, or lemon status) from the buyer, leading the buyer to make inaccurate assumptions about the value of the vehicle. Petitioners hasten to point out that here, too, the Commission's action was taken despite the fact that some states had addressed the problem.

Most relevant to the lemon laundering practice is the Commission's reasoning in *Peacock Buick*.[14] There the Commission found it to be deceptive for a car dealer to offer cars for sale as ''new'' alongside other unquestionably new cars, absent some explicit disclosure, when in fact the cars had been previously used and in some cases

[10] See Statement of Basis and Purpose, Trade Regulation Rule, Sale of Used Motor Vehicles, 49 Fed. Reg. 45696–45700 (1984).

[11] *Id.*, at 45703. The Commission's authority derives from its general Section 5 authority, as well as a specific grant of power to regulate used car sales by rulemaking in Title I of the Magnuson-Moss Act, 15 U.S.C. 2309(b).

[12] *Ford Motor Co.*, 96 F.T.C. 362 (1980); *General Motors Corp.*, 102 F.T.C. 1741 (1983).

[13] 94 F.T.C. 263 (1974) (see also companion cases at pp. 236–289). Petitioners note that the beneficiaries of the Commission's actions here were primarily large industrial and truck freight firms.

[14] 86 F.T.C. 1532 (1975), aff'd 553 F.2nd 97 (4th Cir., 1977).

damaged and repaired. The Commission's decision notes in part,

''Even in the absence of affirmative misrepresentation, it is misleading for the seller of late model used cars to fail to reveal the particularized uses to which they have been put * * * When a later model car is sold at close to list price * * * the assumption likely to be made by some purchasers is that, absent disclosure to the contrary, such car has not previously been used in a way that might substantially impair its value.'', *at 1557–8.* ''Absent a clear and early disclosure of the prior use of a late model car, deception can result from the setting in which a sale is made and the expectations of the buyer * * *'' *at 1555.*

The facts in the typical ''lemon laundering'' situation clearly conform to the Commission's Policy Statement on Deception.[15] The misrepresentation in question is committed by omission; it is likely to mislead consumers acting reasonably under the circumstances; and it is material, in that it is important, it is likely to affect the consumer's choice of a product, and its omission is likely to cause the consumer to suffer injury.

Summary

The practice of ''lemon laundering'' presents a compelling case for deception and consumer injury. The type of deception evidenced by the practice is similar to that addressed in Commission precedents, and conforms to the Commission's stated Policy on Deception. The problem demands a remedy from the Commission, with its expertise in fashioning effective consumer disclosures. Petitioners are confident the Commission can fashion a remedy, through rulemaking or enforcement proceedings, that will preserve state laws protections and will bring effective consumer protection to all used car buyers.

Petitioners stand ready to assist the Commission to develop the factual record of these practices and to fashion appropriate remedies.

Respectfully submitted,

Lawrence Kanter,

Counsel.

The following organizations join as Co-petitioners in this matter:

Consumers for Auto Reliability & Safety, Sacramento, CA
Consumer Federation of America, Washington, DC
U.S. Public Interest Research Group, Washington, DC
Consumer Action, San Francisco, CA
New York Public Interest Research Group, New York, NY
Florida Public Interest Research Group, Tallahassee, FL
Oregon State Public Interest Research Group, Portland, OR
Center for Auto Safety, Washington, DC
Public Citizen, Washington, DC
Virginia Citizens Consumer Council, Yorktown, VA
California Public Interest Research Group, Los Angeles, CA
Connecticut Public Interest Research Group, Hartford, CT
Massachusetts Public Interest Research Group, Boston, MA

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[15] Letter to Hon. John Dingell, October 14, 1983; incorporated in the Commission's decision in *Cliffdale Associates,* 103 F.T.C. 110 (1984).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–96–15]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. National Survey of Ambulatory Surgery—(0920–0334)—Extension

The National Survey of Ambulatory Surgery (NSAS) has been conducted annually since 1994 by the National Center for Health Statistics, CDC. It is the only source of clinical information nationally on utilization of ambulatory surgery. It complements surgery data obtained in another NCHS survey, the National Hospital Discharge Survey (NHDS), which provides annual data concerning the nation's use of inpatient medical and surgical care provided in short-stay, non-Federal hospitals. These NHDS data have been used for more than two decades to analyze the types of surgical treatment provided to hospital inpatients. However, due to advances in medical technology, many surgical treatments and diagnostic procedures are now provided in ambulatory settings which are outside the scope of the NHDS. The NSAS, a national probability sample of hospital-based and freestanding ambulatory surgery centers in the U.S., has been designed to provide valid data about medical and surgical care received in ambulatory surgery locations. Data for the NSAS are collected annually on approximately 120,000 ambulatory surgery cases. The data items which are abstracted from medical records are the basic core of variables from the Uniform Hospital Discharge Data Set (UHDDS) as well as surgery times, total charges and information on anesthesia. These NSAS data will be used for a variety of planning, administrative, and evaluation activities by government, professional, scientific, academic, and commercial institutions. Data collected through the NSAS are essential for evaluating health status of the population, for the planning of programs and policy to elevate the health status of the Nation, for studying morbidity trends, and for research activities in the health field. For example, selected government agencies are interested in specific NSAS data to track the incidence of selected ambulatory procedures, e.g., estimates of tubal sterilization, estimates of endoscopies and related digestive tract procedures, and estimates of endoscopic removal of pre-cancerous polyps. In addition, NSAS data will provide annual updates for numerous tables in the Congressionally-mandated NCHS report, Health, United States. The total cost to respondents is estimated at $256,000.