

**PREPARED STATEMENT OF  
THE FEDERAL TRADE COMMISSION**

**On**

**CONSUMER PROTECTION IN THE USED AND SUBPRIME CAR MARKET**

**Before the**

**HOUSE COMMITTEE ON ENERGY AND COMMERCE  
SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER  
PROTECTION  
UNITED STATES HOUSE OF REPRESENTATIVES**

**Washington, D.C.  
March 5, 2009**

Chairman Rush, Ranking Member Radanovich, and members of the Subcommittee, I am Eileen Harrington, Acting Director of the Bureau of Consumer Protection of the Federal Trade Commission.

advertising of car loans and deceptive lending. The Commission complements its law enforcement work with extensive consumer education and outreach to help consumers inform themselves and make better choices.

## **I. Getting Information About the Used Car**

To make a sound decision on the purchase of a used car, a consumer should look for information about the condition and history of the car under consideration, as well as any warranty offered on the vehicle, if any, and its terms of coverage. Some necessary information is ascertainable only through an independent inspection of the car. Other helpful information about the value and safety of the car is stored in extensive databases maintained by state authorities, insurance companies, and salvage yards. The consumer also needs to know whether the car comes with a warranty to mitigate the risk of broken or damaged systems. While a great deal of information about specific cars is kept by a variety of sources, the challenge is to find efficient ways to make the information available to consumers.

### **A. Vehicle History Information**

Information about a car's history can help consumers avoid purchasing cars that have been totaled, have sustained flood damage, have had their odometers altered, or have been bought back as "lemons" under state lemon laws. The states play an important role in collecting and putting this information into the hands of consumers. First, the states regulate car titles, and according to a recently released report from the National Association of Attorneys General ("NAAG"), "most states have laws requiring that the title be branded to show that a vehicle was previously titled as salvage, flood or rebuilt, or

with equivalent terms indicating prior damage.”<sup>4</sup> Second, many states impose disclosure requirements on sellers, mandating the disclosure of damage history or the manufacturer’s repurchase of the car pursuant to a state lemon law.<sup>5</sup>

Disclosure and titling requirements, however, do not necessarily ensure that consumers will receive accurate information about the history of a used car.

Unscrupulous sellers can cover up a negative history by making cosmetic fixes to the car and moving the car across state lines to obtain a clean title in a different state. In some instances, insurance companies – which are well-suited to record information about the condition of cars they insure – have been charged with selling used cars that should have had their titles branded as “salvage.”<sup>6</sup> Consumers who unwittingly purchase damaged vehicles suffer financial harm when they need to make repairs and when the value of their cars plummet as their history comes to light. Even more troubling are the safety risks to consumers who drive vehicles with damaged electrical or mechanical components. State oversight and enforcement are critical because this kind of deceptive suppression of negative, highly material information tends to be local in nature.<sup>7</sup>

Database services that gather information from state and local authorities, salvage yards, and insurance companies provide consumers with an independent and efficient means of checking a vehicle’s history and thereby avoiding many of these problems. On

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<sup>4</sup> Ellen Taverna, Clearing the Road of Flood Damaged Vehicles, NAAGAZETTE, Vol. 3, No. 1, at 3 (Feb. 18, 2009), available at <http://www.naag.org/clearing-the-road-of-flood-damaged-vehicles.php>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 4 (noting that Iowa Attorney General Tom Miller reached a settlement with Progressive Insurance Company of Ohio).

<sup>7</sup> *Id.* at 4 (stating that although automobile-related fraud cases are local in nature and rarely undertaken on a multi-state basis, the attorney generals share information regularly).

January 29, 2009, the Department of Justice announced the National Motor Vehicle Title Information System (“NMVTIS”), an online computer system intended to provide accurate information about a vehicle’s titling, odometer data,<sup>8</sup> and certain damage history.<sup>9</sup> The information currently is gathered from 36 states, auto recyclers, junk yards and salvage yards, and insurance carriers.<sup>10</sup> The system went live for consumers on January 30, 2009.<sup>11</sup>

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safety recall from the National Highway Traffic Safety Administration (“NHTSA”),<sup>14</sup> car manufacturers, or other sources through online searches.<sup>15</sup> These important sources of information can help educate consumers about the history and condition of the used car they are considering purchasing.

## **B. The Commission’s Used Car Rule**

Consumers also need information about whether the cars they are considering are covered by any warranties, and if so, the extent of the warranties and portion of repair costs, if any, the warranties cover. The FTC’s Used Car Rule prohibits dealers from misrepresenting the mechanical condition of a used car and requires them to disclose if the car is sold without any warranty, or if a warranty is offered, the terms of the warranty. The disclosures must appear on a Buyers Guide label displayed on any used cars offered for sale. The Buyers Guide is intended to counter deceptive statements in the sale of used cars, including by warning consumers that spoken promises are difficult to enforce and by encouraging them to seek independent inspections of used cars. Such inspections can alert consumers to problems with the car’s condition and, possibly, historical information about prior accidents. Between 1985 and 2000, the Commission brought more than 80 actions to enforce the Used Car Rule, and obtained civil penalty orders totaling more than \$1 million.<sup>16</sup> In addition, hundreds of state actions have been brought to enforce

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<sup>14</sup> The NHTSA provides information about safety recalls on its website. See <http://www-odi.nhtsa.dot.gov/recalls/>.

<sup>15</sup> See, e.g., <http://www.ford.com/owner-services/maintenance-service/recall-information>; [http://www.automobilemag.com/auto\\_recalls/index.html](http://www.automobilemag.com/auto_recalls/index.html).

<sup>16</sup> Press Release, Federal Trade Commission, Sweeping Chicago’s North Shore, FTC and State Investigators Check Used Car Dealers for Required “Buyers Guides” (June 30, 2000), available at <http://www.ftc.gov/opa/2000/06/chicagousedcars.shtm>.

compliance with the Rule,<sup>17</sup> and the Commission assists such initiatives with training and investigative support.

The Commission is currently conducting a periodic regulatory review of the Rule.<sup>18</sup> Associations of automobile dealers and state law enforcers alike agree that the Buyers Guide disclosures effectively convey warranty information that is meaningful to consumers.<sup>19</sup> Comments filed by NAAG and the International Association of Lemon

penalties for non-compliance and would require dealers to conduct inspections, check VINS against the NMVTIS database, and disclose additional information.<sup>22</sup>

The Commission will give careful consideration to all comments and suggested amendments to the Rule as it determines





enforcement agencies is to identify deceptive or otherwise unlawful lending practices, and to use multiple strategies to combat them.

The Commission brought 29 cases challenging deception in the advertising of finance or lease terms for cars between 1990 and 2000.<sup>27</sup> These cases involved car manufacturers, dealerships, and advertising agencies, and the FTC alleged that these entities made bold promotions of low costs or terms that omitted or buried key costs, or that misrepresented the terms available to consumers.<sup>28</sup>

According to the Commission's complaints, in some instances advertisements emphasized low monthly payments, and omitted or failed to conspicuously disclose huge

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<sup>27</sup> See *In re Simmons Rockwell Ford Mercury, Inc.* ("Simmons Rockwell"), FTC Docket No. C-3950 (Apr. 27, 2000); *In re R.N. Motors, Inc.* ("R.N. Motors"), FTC Docket No. C-3947 (Apr. 27, 2000); *In re Dunphy Nissan, Inc.* ("Dunphy"), FTC Docket No. C-3924 (Feb. 7, 2000); *In re Northeast Auto Outlet, Inc.* ("Northeast"), FTC Docket No. C-3925 (Feb. 7, 2000); *In re Marty Sussman Organization, Inc.*, FTC Docket No. C-3923 (Feb. 7, 2000); *In re Norristown Automobile Co., Inc.*, FTC Docket No. C-3922 (Feb. 7, 2000); *In re Pacifico Ardmore, Inc.*, FTC Docket No. C-3920 (Feb. 7, 2000); *In re Pacifico Ford, Inc.*, FTC Docket No. C-3921 (Feb. 7, 2000); *In re Chrysler Corp.* ("Chrysler"), FTC Docket No. C-3847 (Jan. 4, 1999); *In re Bozell Worldwide Inc.* ("Bozell"), FTC Docket No. 3845 (Jan. 4, 1999); *In re Martin Advertising, Inc.* ("Martin"), FTC Docket No. C-3846 (Jan. 4, 1999); *In re Grey Advertising, Inc.* ("Grey"), FTC Docket No. C-3793 (Apr. 6, 1998); *In re Foote, Cone, and Belding Advertising, Inc.* ("Foote Cone"), FTC Docket No. C-3792 (Apr. 6, 1998); *In re Rubin Postaer and Associates, Inc.* ("Rubin Postaer"), FTC Docket No. C-3794 (Apr. 6, 1998); *In re Toyota Motor Sales, U.S.A., Inc.*, FTC Docket No. C-3776 (Jan. 5, 1998); *In re Volkswagen of America, Inc.*, FTC Docket No. C-3778 (Jan. 5, 1998); *In re Bommarito Oldsmobile, Inc.* ("Bommarito"), FTC Docket No. C-3774 (Jan. 5, 1998); *In re Beuckman Ford, Inc.*, FTC Docket No. C-3777 (Jan. 5, 1998); *In re Suntrup Ford, Inc.* ("Suntrup"), FTC Docket No. C-3779 (Jan. 5, 1998); *In re Lou Fusz Automotive Network, Inc.* ("Lou Fusz"), FTC Docket No. C-3780 (Jan. 5, 1998); *In re Herb Gordon Auto World, Inc.* ("Herb Gordon"), FTC Docket No. C-3734 (Apr. 15, 1997; corrected Apr. 18, 1997); *In re Huling Bros. Chevrolet, Inc.* ("Huling"), FTC Docket No. C-3732 (Apr. 14, 1997); *In re General Motors Corp.* ("General Motors"), FTC Docket No. C-3710 (Feb. 6, 1997);



information about such practices and evaluate whether specific instances of fraud merit the attention of our state partners or independent federal action.

In addition to its enforcement work, the Commission has created materials to help educate consumers on how to shop for loans on cars, most notably a guide entitled *Understanding Vehicle Financing*.<sup>35</sup> The FTC makes this guide available in English and Spanish on the FTC's website.



Act to challenge deception in the sale of small-money loans secured by car titles.<sup>42</sup> The Commission remains alert to allegations that title loan companies use deception to victimize borrowers, and as always, welcomes information from consumers, state agencies, and consumer advocates to help identify law breakers.

### **B. Negative Equity and Repossession**

According to some consumer groups with expertise in this area,<sup>43</sup> consumers are facing a credit crunch on their car loans. Simply put, some consumers owe more money on their loans than their cars are worth.<sup>44</sup> This negative equity problem means that consumers who trade in used cars are rolling their debt into their next vehicle purchases, thus digging themselves deeper and deeper into debt.

The Commission uses all the tools at its disposal to increase its protection of



disclosures and are free of deception. Equally important, consumers in need of emergency loans who are considering borrowing against their cars need accurate information about the costs and terms of offered loans, so that they can make fully informed decisions about the risks of the debt. Through targeted law enforcement, partnerships with state and federal law enforcement authorities, increased vigilance on emerging practices, and consumer education, the Commission will work with the Committee to continue to help consumers avoid the pitfalls in the used car marketplace.